

# DIVISION 2: BOARD OF PRISON TERMS

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## 2. BOARD OF PRISON TERMS

### CHAPTER 1. GENERAL

#### Article 1. Rules of Construction and Definitions

##### **2000. Rules of Construction and Definitions.**

a) Rules of Construction. The following rules of construction apply to the regulations contained in this division, except as otherwise noted:

(1) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.

(2) The order in which criteria are listed does not indicate their relative weight or importance.

(3) "Inmate," "prisoner," or "parolee" applies to any person who is or has been committed to the custody of the director of Corrections, including inmates, residents, parolees, and discharges, regardless of that person's present status.

(4) "Regulation" means rule or regulation.

(5) "Shall" is mandatory, "should" is advisory, and "may" is permissive.

(6) The past, present, or future tense includes the others.

(7) The masculine gender includes the feminine gender; the singular includes the plural.

(8) The symbol § refers only to board rules contained in this division.

(9) The time limits specified in these rules do not create a right to have the specified action taken within the time limits. The time limits are directory, and the failure to meet them does not preclude taking the specified action beyond the time limits.

(b) Definitions. For the purpose of the regulations contained in this division the definitions below shall have the following meanings:

(1) ISL Prisoner. A person sentenced to prison for a crime committed on or before June 30, 1977, who would have been sentenced pursuant to Penal Code section 1170 if he had committed the crime on or after July 1, 1977.

(2) DSL Prisoner. A person sentenced to prison pursuant to Penal Code section 1170 for a crime committed on or after July 1, 1977. For the purpose of these rules, once an ISL prisoner has received a retroactively calculated DSL release date all rules applying to DSL prisoners apply to the ISL prisoner's DSL release date and parole.

(3) Life Prisoner. A prisoner serving a sentence of life with the possibility of parole. The parole date is determined by the board. Life sentences may be imposed for the following crimes or conspiracy to commit any of the following crimes:

(A) First degree murder (Penal Code section 187).

(B) Second degree murder (Penal Code section 187) committed on or after November 8, 1978.

(C) Kidnapping for extortion or ransom, with bodily harm to the victim (before September 22, 1951) and without bodily harm to the victim (since September 22, 1951); and kidnapping for robbery (Penal Code section 209).

(D) Train wrecking not resulting in death or bodily harm (Penal Code section 219).

(E) Sabotage resulting in death or great bodily harm (former Military and Veterans Code section 1672a).

(F) Certain forms of aggravated assault by a prisoner serving a sentence of life imprisonment (Penal Code section 4500).

(G) Exploding a destructive device causing mayhem or great bodily injury (Penal Code section 12310).

(H) Attempt to murder a government official in retaliation for or prevention of his performance of official duties. (Penal Code section 217.1).

(I) Habitual Sex Offender, Penal Code section 667.51(c): A party who has violated Penal Code section 288 (committing lewd or lascivious acts or crimes against children) and who has served two or more prison terms as defined in section 667.5 as punishment for violation of an offense listed in subdivision (b), including commission to the state hospital.

(J) Habitual Offender, Penal Code section 667.7: Any party convicted of a felony involving or likely to involve infliction of great bodily harm, and who has served two or more prior prison terms as per section 667.5 for crimes of murder, mayhem, rape, etc. or any felony punishable by death or life imprisonment, with or without possibility of parole.

(K) Attempted willful, deliberate, and premeditated murder as defined in Penal Code section 189 (Penal Code sections 187, 664).

(L) Aggravated mayhem (Penal Code section 205).

(M) A new conviction or violation of any of specified controlled substance provisions where the person has served two separate prior prison terms upon conviction of any of the specified provisions (Penal Code section 667.75).

(N) Attempted murder of a peace officer or firefighter committed on or after January 1, 1995 (Penal Code section 664).

(O) Attempted willful, deliberate, and premeditated murder of a peace officer or firefighter committed on or after January 1, 1998 (Penal Code section 664).

(4) Adjusted Maximum DSL Date. This date is computed by adding any at large time to the unadjusted maximum DSL date.

(5) Agent. See Parole Agent.

(6) Asylum State. The state other than California in which a parolee-at-large (PAL) is in custody.

(7) Battered Woman Syndrome. Evidence of the effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

(8) Board. See Board of Prison Terms.

(9) Board Action. An official decision of the board in an individual case.

(10) Board of Prison Terms (BPT). The administrative board responsible for setting parole dates, establishing parole length and conditions, discharging sentences for certain prisoners and parolees; granting, rescinding, suspending, postponing, or revoking paroles; conducting disparate sentence reviews; advising on clemency matters; and handling miscellaneous other statutory duties. Persons under the board's jurisdiction are all adult felons committed by superior courts to the Director of Corrections under Penal Code sections 1168 and 1170 and all adult felons sentenced under the Indeterminate Sentence Law.

(11) Briggs Initiative: Proposition 7, November 7, 1978 general election, specifying new minimum eligible parole release dates for first and second degree murders, effective November 8, 1978.

(12) C&PR. Classification and Parole Representative: the department employee at each prison who has been designated to be that prison's liaison with the board. Such designation shall be made by the Director of Corrections after consultation with the board.

(13) California Agency Parolee. A felon released from confinement in a California prison to supervision in a California community who subsequently is within the custody of any agency of the State of California or any subdivision thereof except the Department of Corrections.

(14) California Agency Prisoner. A prisoner who has been transferred from the custody of the Director of Corrections to the custody of any agency of the State of California or any subdivision thereof.

(15) California Concurrent Parolee. A prisoner on parole from a California sentence and a sentence of another jurisdiction who is being supervised in a California community pursuant to the Uniform



Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

(16) Case Conference. A documented conference between a parole agent and his supervisor to discuss a parolee's behavior.

(17) Central File. A master file maintained by the department containing records regarding each person committed to its jurisdiction. This file is maintained by the institution or parole region to which the person is assigned. See department regulations for the specific contents of this file.

(18) Central Office. The board office in Sacramento.

(19) Central Office Calendar. The central office calendar is composed of commissioners or deputy commissioners as designated by the chairman. They are authorized to make decisions regarding matters reported to the board, including the decision to order a hearing scheduled.

(20) Central Office File. A folder maintained by the department's chief records administrator in Sacramento regarding each felon. The file contains copies of some records and correspondence accumulated during commitment.

(21) Central Office Hearing Coordinator. The board employee at the central office who is responsible for schedules, attorney appointments, and other services related to hearings.

(22) Chairperson. The administrative head of the board who is designated by the Governor pursuant to Penal Code section 5075.

(23) Commissioner. An official of the board appointed by the Governor pursuant to Penal Code Section 5075.

(24) Community Release Board (CRB). The name of the Board of Prison Terms prior to the name change effective January 1, 1980. Any references to Community Release Board apply to the Board of Prison Terms.

(25) Concurrent Parolee. A prisoner on parole from a California sentence and a sentence of another jurisdiction who is being supervised in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

(26) Concurrent Prisoner. A California prisoner, also under sentence of another state, who is concurrently serving both sentences in a penal institution of the other state.

(27) Conditions of Parole. The specific conditions under which a prisoner is released to parole supervision.

(28) Consecutive Prisoner. A California prisoner, also under sentence of another state, who is confined in a penal institution of the other state and whose California term shall commence upon completion of the other state's sentence.

(29) Consecutive Term. Pursuant to amendments to Penal Code Section 669, effective January 1, 1979, a life term may be imposed consecutive to a determinate term.

(30) Cooperative Parolee. A felon released from confinement in a California prison to supervision in a state other than California pursuant to the Uniform Act for Out-of-State Parole Supervision (Penal Code sections 11175-11179).

(31) Coordinator Staff. Department (institution and P&CSD) and board staff who coordinate parole postponement, rescission, and revocation hearings.

(32) CRC. California Rehabilitation Center: a control and treatment institution for civilly committed narcotic addicts.

(33) Criminal conduct. Conduct constituting a felony or misdemeanor under federal, state, or county law.

(34) Cum. Sum. Cumulative Case Summary: the permanent and cumulative summary of specific portions of the record maintained by the department regarding each prisoner from reception to discharge.

(35) Department. The Department of Corrections.

(36) Deputy Commissioner. An official of the board employed pursuant to Penal Code Section 5076.1.

(37) DSL. Uniform Determinate Sentencing Act of 1976. Stats. 1976, Chapter 1139 as amended by Stats. 1977, Chapter 165. This refers to sections of the Penal Code and other Codes as they became operative July 1, 1977.

(38) DOP. A difference of opinion regarding a prisoner's or parolee's case requiring resolution at higher level.

(39) Director of Corrections. The administrative head of the Department of Corrections appointed by the Governor. See Penal Code sections 5050 and 5051.

(40) Dispositional Witness. A dispositional witness is one whose expected testimony provides information regarding the overall adjustment of the prisoner or parolee or other factors to be considered when rendering a disposition in a proceeding.

(41) District Administrator. A parole administrator in the P&CSD with supervisory and managerial responsibilities.

(42) District Hearing Agent (DHA). The P&CSD staff person responsible for application of specific procedures pertaining to the parole revocation hearing process; the primary liaison between the P&CSD and the board in matters and procedures pertaining to the parole revocation hearing process.

(43) Effective Discharge Date. The effective discharge date is the latest date on which the jurisdiction of the board and the department over the individual expires.

(44) Evidentiary Witness. An evidentiary witness is a person who perceived, reported on, or investigated an event material to the proceeding. An event material to a proceeding is an act or omission allegedly committed by the prisoner or parolee which is a basis for the proceeding. An evidentiary witness is one whose expected testimony either supports or refutes an act or omission allegedly committed by the parolee or prisoner.

(45) Federal Concurrent Prisoner. A California prisoner, also under sentence of the United States, who is concurrently serving both sentences in a federal institution.

(46) Federal Consecutive Prisoner. A California prisoner, also under sentence of the United States, who is confined in a penal institution of the United States and whose California term shall commence upon completion of the United States' sentence.

(47) Federal Contract Prisoner. A California prisoner who is confined in a federal institution pursuant to Penal Code section 2911.

(48) Field File. A working file maintained by a parole unit office containing information about a parolee and his current parole.

(49) Full Board. The commissioners performing the function of meeting en banc in either public or executive session. At least five commissioners shall participate when performing this function and no action shall be valid unless it is concurred in by a majority vote of those present.

(50) Good Cause. A finding by the board based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.

(51) Good Time Credit. Credit for a DSL prisoner's good behavior and participation in prison program received pursuant to Penal Code section 2930, et seq. Good time credit advances the DSL release date.

(52) Hearing. A proceeding at which evidence is received for use in deciding factual and dispositional questions.

(53) Hearing Panel. One or more persons (commissioners, deputy commissioners or a combination thereof) assigned to consider a case or make a decision.

(54) Hold. A request by a department employee that a parolee be held in custody until further notice. A person under a parole hold is not eligible for bail.

(55) ICC Prisoner. A California prisoner who is confined in a penal institution of another state pursuant to the Interstate Corrections Compact (See Penal Code section 11189).



(56) Incarcerating Jurisdiction. The jurisdiction where a WICC, ICC, federal contract, federal concurrent or concurrent prisoner is incarcerated.

(57) Institution Hearing Coordinator. A department employee assigned to coordinate the rescission process within that institution.

(58) Interstate Unit. The section of the P&CSD which coordinates the supervision of California cooperative parolees and the return of parolees-at-large from asylum states. The division of the Department of Corrections which has responsibility for federal contract, federal concurrent, WICC, ICC and consecutive prisoners and multijurisdiction parolees incarcerated in the prison of another jurisdiction.

(59) ISL. Indeterminate Sentence Law. This refers to sections of the Penal Code and other Codes as they were operative prior to July 1, 1977.

(60) ISL Release Date. The date on which an ISL prisoner may be released from confinement pursuant to the ISL. The release may be a release to parole or a release to discharge.

(61) Located in California. A multijurisdiction prisoner is located in California if he is a federal contract, federal consecutive or federal concurrent prisoner incarcerated in a federal correctional institution located in California; a California agency prisoner; or an out-to-court prisoner brought before a California court.

(62) Located Outside California. A multijurisdiction prisoner is located outside California if he is a federal compact, federal consecutive or federal concurrent prisoner incarcerated in a federal correctional institution located outside California; a concurrent prisoner; a consecutive prisoner; a WICC prisoner; an ICC prisoner or an out-to-court prisoner brought before a court outside California.

(63) Material Evidence. Evidence which has a substantial bearing on matters in dispute and legitimate and effective influence on the decision of a case.

(64) M.R.D.: Maximum Release Date: the latest date on which a DSL prisoner can be released from confinement. This date is computed by subtracting preprison credit from the period of confinement prescribed by the court and adding this period of time to the reception date. In computing the maximum release date, good time credit is not subtracted. This date shall be recomputed to reflect the addition of any time at large.

(65) Maximum Term. The longest statutory period of time an ISL nonlife 1168 or life prisoner may remain under the jurisdiction of the board.

(66) Minimum DSL Date. The earliest date on which a DSL prisoner may be released from prison. This date is computed by subtracting all preprison credit and all possible good time credit from and adding any at-large-time to the period of confinement under the DSL and adding this period of time to the reception date.

(67) Minimum Eligible Parole Date (MEPD). The earliest date on which an ISL or life prisoner may legally be released on parole. If a prisoner is serving both a life or ISL sentence and a determinate sentence and the determinate sentence release date is later than the statutory MEPD for the life or ISL sentence, the determinate sentence release date is the MEPD.

(68) Minimum Term. The shortest statutory period of time an ISL prisoner must remain under the jurisdiction of the board, including time in prison and on parole.

(69) Multijurisdiction Parolee. Any concurrent, California concurrent, California agency, or cooperative parolee.

(70) Multijurisdiction Prisoner. Any federal contract, federal concurrent, federal consecutive, concurrent, consecutive, California agency, WICC or ICC prisoner.

(71) NAEA. The Narcotic Addict Evaluation Authority: the releasing authority for persons civilly committed to the custody of the Director of the Department of Corrections for treatment of narcotics addiction. See Welfare and Institutions Code section 3150 et seq.

(72) Out-to-Court Prisoner. A California prisoner who is temporarily removed from a department institution to be brought before a court to be tried for an offense, to be examined by a grand jury or magistrate, or for any other proceedings.

(73) Outpatient Clinic. See POC.

(74) P&CSD. Parole and Community Services Division: department staff who supervise parolees and provide a variety of field services.

(75) PAL. Parolee at large: an absconder from parole supervision, who is officially declared a fugitive by board action suspending parole.

(76) Parole Agent. An employee or any of his supervisors in the Department of Corrections who is assigned to supervise adult felons and civilly committed addicts released to the supervision of the P&CSD.

(77) Parolee. A felon released from confinement in state prison to supervision in the community.

(78) Parole Consideration Hearing. Any hearing at which a prisoner's parole suitability is considered including an initial parole hearing, subsequent hearing, and rehearing.

(79) Parole Hold. See Hold.

(80) Parole Violation. Conduct by a parolee which violates the conditions of parole or otherwise provides good cause for the modification or revocation of parole.

(81) Parole Violation Extension. An extension of return to custody time for a parolee in revoked status.

(82) Parole Violator. A parolee who is found to have violated parole and who may be reconfined pursuant to Penal Code section 3057. A parolee returned to prison with a new court commitment is not a parole violator under these rules even if he has been found in violation of parole.

(83) POC. Parole Outpatient Clinic: a section of the P&CSD which provides psychiatric and psychological treatment and evaluation of parolees.

(84) Preprison Credit. Credit for time in custody as certified by the court and provided for in Penal Code section 2900.5.

(85) Probable Cause. A state of facts as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the charges are true.

(86) Rap Sheet. The "State Summary Criminal History Information" containing the arrest and dispositional information defined in Penal Code section 11105.

(87) RC. Reception center: an institution designated by the director as a center for the reception of prisoners newly committed to the Department of Corrections.

(88) Receiving State. The state which supervises a cooperative parolee or a concurrent parolee.

(89) Regional Administrator. Administrator of a geographical region in the P&CSD.

(90) Regional Hearing Coordinator. The parole agent assigned to coordinate the revocation process within a P&CSD region.

(91) Relevant Evidence. Evidence which tends to prove or disprove an issue or fact in dispute.

(92) Revocation File. A file containing the documents pertinent to a particular revocation proceeding.

(93) Screening Offer. An offer of a disposition to a parolee when revocation or revocation extension charges are pending.

(94) Sending State. The state where a concurrent parolee was imprisoned.

(95) Slough File. A file supplemental to the central file containing bulky or seldom needed records.

(96) Staff Representative. A department employee who assists the board during a hearing.



(97) Subpoena. A means to secure the attendance of a witness at a parole revocation or rescission hearing. It is an order directed to a person requiring that person's attendance at a particular time and place to testify as a witness.

(98) Subpoena Duces Tecum. A means to secure the delivery of documentary evidence to parole revocation or rescission hearings, ordering that person to deliver documentary evidence at a particular time and place and testify about that evidence.

(99) Unadjusted Maximum DSL Date. This date is computed by subtracting preprison credit from the period of confinement under the DSL and adding this period of time to reception date. In computing the unadjusted maximum good time credit is not subtracted. This date does not reflect the addition of any time at large (see Adjusted Maximum DSL Date).

(100) Unit File. See field file.

(101) Unit Supervisor. A supervisor of case-carrying agents in the P&CSD.

(102) WICC Prisoner. A California prisoner who is confined in a penal institution of another state pursuant to the Western Interstate Corrections Compact. (See Penal Code Section 11190.)

(103) Work-Time-Credit: A reduction of the time served for performance in work, training or education programs.

NOTE: Authority cited: Sections 3041, 3052 and 5076.2, Penal Code. Reference: Sections 187, 189, 205, 209, 217.1, 219, 664, 667.51(c), 667.7, 667.75, 669, 2933, 3041, 3046, 3056, 3057, 3060, 4500, 4801, 5075, 5076.1 and 12310, Penal Code; Section 1672(a), Military and Veterans Code; and Initiative, Proposition 7, November 7, 1978, General Election.

#### HISTORY:

1. Repealer of Division 2 (Sections 2000-2725) and new Division 2 (Sections 2000-2819) filed 7-5-77 as an emergency; effective upon filing (Register 77, No. 28). For history of former Division 2, see Register 76, No. 21.
2. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
3. Certificate of Compliance as to 7-5-77 filing filed 10-28-77 (Register 77, No. 44).
4. Amendment filed 2-17-78; effective thirtieth day thereafter (Register 78, No. 7).
5. Amendment of subsection (b) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
6. Editorial correction (Register 79, No. 38).
7. Amendment of subsection (b) filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).
8. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
9. New subsection (a)(9) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
10. Amendment of subsection (b) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
11. Amendment of subsection (b) filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).
12. Amendment of subsection (b) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
13. Amendment of subsection (b) filed 3-11-87; effective thirtieth day thereafter (Register 87, No. 11).
14. Amendment of subsection (b) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
15. Amendment of subsection (b) filed 1-19-90; operative 2-18-90 (Register 90, No. 5).
16. New subsection (b)(33) and subsection renumbering filed 9-23-96; operative 10-23-96 (Register 96, No. 39).

17. New subsection (b)(8), subsection renumbering, and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
18. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).
19. Amendment filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).
20. Amendment of subsection (b)(22), new subsection (b)(49) and amendment of Note filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).
21. Amendment of subsections (b)(1)-(2) and new subsections (b)(3)(N)-(O) filed 5-13-2004 as an emergency; operative 5-17-2004 (Register 2004, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-14-2004 or emergency language will be repealed by operation of law on the following day.
22. Amendment of subsections (b)(1)-(2) and new subsections (b)(3)(N)-(O) refiled 9-13-2004 as an emergency; operative 9-13-2004 (Register 2004, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-11-2005 or emergency language will be repealed by operation of law on the following day.
23. Amendment of subsections (b)(1)-(2) and new subsections (b)(3)(N)-(O) refiled 1-6-2005 as an emergency; operative 1-11-2005 (Register 2005, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-11-2005 or emergency language will be repealed by operation of law on the following day.
24. Certificate of Compliance as to 1-6-2005 order transmitted to OAL 5-11-2005 and filed 6-22-2005 (Register 2005, No. 25).

## Article 2. Personnel

### 2005. Conflict of Interest Code.

NOTE: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code; and Section 5075, Penal Code.

#### HISTORY:

1. New article 2 (section 2005 and Appendix) filed 3-27-86; effective thirtieth day thereafter. Approved by Fair Political Practices Commission 3-4-86 (Register 86, No. 13). For history of former article 2, Sections 2005-2009, see Register 82, No. 52.
2. Editorial correction of History Note 1 in addition to printing of Appendix which was filed on 3-27-86 but inadvertently omitted during the publication of Register 86, No. 13 (Register 88, No. 5).
3. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
4. Amendment of Appendix filed 1-19-90; operative 2-18-90 (Register 90, No. 5).
5. Designation and amendment of subsections (a) and (b), new subsections (c) and (d) and amendment of Appendix filed 1-12-93 (Register 93, No. 3). Submitted to OAL for printing purposes only pursuant to Government Code section 11343.8. Approved by Fair Political Practices Commission 11-9-92.
6. Editorial correction of subsections (c)-(d) (Register 95, No. 42).
7. Amendment of section and Appendix filed 2-28-2002; operative 3-30-2002. Approved by Fair Political Practices Commission 1-22-2002 (Register 2002, No. 9).



8. Amendment of Appendix filed 3-3-2004; operative 4-2-2004. Approved by Fair Political Practices Commission 12-18-2003 (Register 2004, No. 10).
9. Repealer of section and appendix filed 7-12-2006; operative 8-11-2006. Approved by Fair Political Practices Commission 5-24-2006 (Register 2006, No. 28).

### Article 3. Policy Making Procedures

#### 2015. Board Meetings.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.1, Penal Code.

##### HISTORY:

1. Amendment of section title filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
2. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2016. Adoption of Policy and Procedures: The Board Rules.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.2, Penal Code.

##### HISTORY:

1. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
2. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2017. Administrative Directive.

(a) General. An administrative directive is a communication from the chairman concerning any information the chairman feels should be disseminated. An administrative directive may be signed by the chairman, vice-chairman or the executive officer.

(b) Internal Communications. The administrative directive may be used for the following internal communications:

- (1) Information concerning personnel changes, court decisions and other information which does not change procedures.
- (2) Changes in forms and instructions regarding the use and distribution of forms.

(c) Emergency Rules. The administrative directive may be used to implement emergency rules which are adopted under the emergency provisions of the Administrative Procedure Act.

##### HISTORY:

1. Repealer of subsection (b)(3) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

### Article 4. Public Participation

#### 2025. Regulations.

(a) All regulations adopted by the board shall be filed and made public and shall be in language easily understood by the general public. When promulgating regulations, the board shall comply with the Administrative Procedure Act and shall maintain and publish a compendium of regulations.

(b) Individual Cases. Public comment in individual cases shall be considered under the procedures established in this article.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.1, Penal Code.

##### HISTORY:

1. Repealer of Article 4 (Sections 2025-2030) and new Article 4 (Sections 2025-2029) filed 2-17-78; effective thirtieth day thereafter (Register 78, No. 7). For prior history, see Register 77, No. 44.
2. Amendment of subsection (a) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### 2026. Summary of the Administrative Procedure Act.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.2, Penal Code and Sections 11420-11427, Government Code.

##### HISTORY:

1. Amendment of subsection (b) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment of subsection (a) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
3. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2027. Public Participation in Rulemaking.

(a) Informal Petition. Any interested person may inquire or make suggestions concerning the regulations by writing to the executive officer of the board.

(b) Formal Petition. Any interested person may petition the board requesting the adoption, amendment, or repeal of a regulation. The petition shall state clearly and concisely the substance or nature of the regulation, amendment, or repeal requested, the reason for the request, and reference to the authority of the board to take the action requested. Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation, the board shall within 30 days deny the petition in writing, stating the reasons, or schedule the matter for public hearing.

(c) Court Review. Any interested person may bring an action for declaratory relief pursuant to the provisions of the Code of Civil Procedure.

#### 2028. Public Comment in Individual Cases.

(a) General. Any person may submit information concerning any prisoner or parolee and the offenses. Written comments from the public shall be directed to the executive officer of the board who shall forward the comments to the prisoner's or parolee's central file for the consideration of future hearing panels. The board shall consider, in deciding whether to release a prisoner on parole, all information received from the public.

(b) Proposed Decisions. Any person may submit information which was not available to the hearing panel or comments on a proposed decision. Comments or new information shall be submitted to the executive officer who shall forward the information to the decision review unit and to the prisoner, parolee, district attorney and prisoner or parolee's attorney. The comments shall be incorporated into the hearing record and considered before the decision is effective. If information submitted may substantially affect the decision, it shall be submitted to the board review committee for disposition in accordance with section 2041.

NOTE: Authority cited: Sections 3041 and 3052, Penal Code. Reference: Sections 3042 and 3043.5, Penal Code; In re Fain (1976) 65 Cal.App.3d 376.

##### HISTORY:

1. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment of subsection (a) filed 3-11-87; effective thirtieth day thereafter (Register 87, No. 11).



3. Amendment of subsection (b) filed 1-19-90; operative 2-18-90 (Register 90, No. 5).
4. Editorial correction of printing error in subsection (b) (Register 91, No. 29).

**2029. Victims, Next of Kin, and Immediate Family Members at Hearings.**

(a) Notice to Board. Victims or, if the victim has died, the next of kin or immediate family members may, upon request to the Board of Prison Terms, receive notification of any parole consideration hearing, to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison, so that an opportunity to make a statement is afforded them. The board shall notify each such person who has informed it of his or her address at least 30 days prior to the hearing date.

(b) Notification and Appearance, Next of Kin. The next of kin and immediate family members shall be entitled to notification and to appear under this section in the following order:

- (1) Spouse
- (2) Children
- (3) Parents
- (4) Siblings
- (5) Grandchildren
- (6) Grandparents

If one person qualifies as the next of kin, he or she shall be entitled to notice and appearance under this section.

(c) Notification and Appearance, Immediate Family Members. If there is no next of kin, immediate family members shall be entitled to notification and to appear under this section in the order specified in subsection (b).

Up to two persons of the categories in descending order are entitled to notice and to appear. More than two persons may appear with the prior approval of a panel member, the chairman, or the executive officer.

(d) Representation by Counsel. The victim, next of kin, or immediate family members may appear personally or be represented by counsel. If counsel and client both attend the hearing, only one may appear by making a statement or addressing the panel.

(e) Support Persons. Victims, next of kin, or immediate family members attending hearings may be accompanied by one support person of his or her own choosing who shall not participate in the hearing nor make comments while in attendance. In order for such person to be admitted to the hearing, the person requesting support shall advise the board of the name of the support person at the time he or she informs the board of his or her intention to attend.

(f) Audio or Video Tapes. In lieu of personal appearance, any victim, next of kin, or immediate family member may submit an audio taped (cassette) or videotaped (VHS format) statement, not to exceed 15 minutes in length, to the Classification and Parole Representative of the appropriate institution three weeks before the hearing for consideration by the hearing panel. [The Classification and Parole Representative shall advise the executive officer of the receipt of any such tape and transcript.] Material submitted after this deadline need not be considered. A written transcript must accompany an audio or video taped statement. The tape and transcript shall be placed in the prisoner's central file. The person submitting the tape may request at the time of any subsequent hearing that the board reconsider the tape.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3043, 3043.1, 3043.2, 3043.3, 3043.5, 5075 and 5076.1, Penal Code; and Section 11120, Government Code.

**HISTORY:**

1. Amendment filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is

printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).

2. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
3. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
4. Amendment of section heading, subsection (a) and Note and new subsections (b)-(f) filed 4-24-92; operative 5-25-92 (Register 92, No. 19).

**2029.1. Visitors and Observers at Hearings.**

Visitors and observers may attend individual case hearings if prior permission has been obtained from any commissioner, deputy commissioner, person assigned to the hearing panel, the chairman, or the executive officer, subject to the authority of the hearing panel to exclude visitors and observers upon the request of the prisoner or parolee or upon the panel's own motion. Attendance may be permitted only for educational or informational purposes. Persons having a personal interest in the case shall disclose that interest when requesting permission to attend. Visitors and observers may not participate in the hearing except to review written records as permitted by law.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3043, 3043.1, 3043.2, 3043.3, 3043.5, 5075 and 5076.1, Penal Code; and Section 11120, Government Code.

**HISTORY:**

1. New section created and amended from second paragraph of section 2029 filed 4-24-92; operative 5-25-92 (Register 92, No. 19).

**2030. Prosecutor Participation.**

(a) Hearings in Which Prosecutors May Participate.

(1) General. Except as otherwise provided in this section, the chairman or executive officer may permit a representative of the office which prosecuted a prisoner or parolee to participate in any board hearing when the prisoner or parolee is represented by an attorney.

(2) Extended Term Hearings. A representative of the attorney general or the district attorney of the county from which the prisoner was committed may participate in any extended term hearing for that prisoner.

(3) Parole Consideration and Rescission Hearings for Life Prisoners. A representative of the district attorney of the county from which a life prisoner was committed may participate in any parole consideration or rescission hearing for that prisoner. If the attorney general prosecuted the case for the county, or if the district attorney cannot appear because of a conflict, the attorney general may appear and participate in the hearing for the district attorney.

(b) Notification Requirements. Notice that a hearing will be held shall be given to the prosecutor at least 30 days before the hearing. If the prosecutor wishes to participate in the hearing he shall, at least two weeks before the hearing, notify the institution hearing coordinator that a representative will attend. The prisoner's attorney shall be notified that a prosecutor will attend.

(c) Prehearing Procedures. The prosecutor may review the prisoner's central file and submit any relevant documents including the Appellant's and Respondent's Statements of the Case and Statements of Facts filed in any appeal that may have been taken from the judgment. Any information which is not already available in the central file shall be submitted in writing to department staff not later than ten days before the hearing. Failure to submit new information as provided in this section may result in exclusion of the information at the hearing.



As soon as administratively feasible department staff shall forward to the prisoner or his attorney copies of any documents submitted by the prosecutor. Department staff shall forward to the prosecutor copies of all documents provided to the prisoner or his attorney.

(d) Hearing Procedures.

(1) Procedures. The presiding hearing officer shall specify the hearing procedures and order in which testimony will be taken. The hearing officer shall ensure throughout the hearing that unnecessary, irrelevant or cumulative oral testimony and statements are excluded.

(2) Role of the Prosecutor. The role of the prosecutor is to comment on the facts of the case and present an opinion about the appropriate disposition. In making comments, supporting documentation in the file should be cited. The prosecutor may be permitted to ask clarifying questions of the hearing panel, but may not render legal advice.

NOTE: Authority cited: Sections 3041 and 3052, Penal Code. Reference: Sections 1170.2 and 3041.7, Penal Code.

**HISTORY:**

1. New section filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
2. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
3. Amendment of subsection (a)(3) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
4. Amendment of subsections (c) and (d)(1) filed 1-19-90; operative 2-18-90 (Register 90, No. 5).

**2031. Media Representatives at Hearings.**

Representatives of newspapers and wire services may attend life parole consideration, rescission, revocation, and revocation extension hearings. Requests to attend a particular hearing shall be submitted to the executive officer no later than three working days before the hearing. Requests to attend life prisoner parole hearings may be submitted no earlier than two working days after the date of issuance of the monthly notice of hearings. The executive officer shall determine the number of media representatives who may attend the hearing after considering the custody and security requirements of the department and the space reasonably available at the prison or other incarcerating jurisdiction.

If the number of media representatives requesting permission to attend the hearing exceeds the number who will be permitted, the executive officer shall submit to the Capital Correspondents Association of Sacramento (association) the names of the representatives wishing to attend. The association shall consider the need for national, statewide and local coverage and recommend who should be permitted to attend the hearing. The association shall submit its recommendation to the executive officer. The executive officer shall decide which media representatives will be permitted to attend.

If the executive officer disapproves the association's recommendations or if the Association has not recommended media representatives no later than four working days before the hearing, the executive officer shall decide who will be permitted to attend. The executive officer shall make the designation considering the need for national, statewide and local representation.

The executive officer shall notify the designated media representatives at least three working days before the hearing.

An electronic sound recording of the hearing may be made.

The hearing panel may exclude any media representative for cause and shall exclude all media representatives while confidential materials are discussed at the hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 3060, Penal Code; Section 11126, Government Code.

**HISTORY:**

1. New section filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. Amendment filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
3. Amendment filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).
4. Editorial correction of NOTE No. 3 amending filing date from 6-14-83 to 6-14-84. (Register 91, No. 11).
5. Amendment filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

**2032. Television and Radio Coverage of Parole Hearings.**

(a) General. Representatives of television and radio stations may attend individual case hearings.

(b) Television and radio coverage of Board of Prison Terms' parole hearings will be authorized, unless such coverage would create a risk to the security of an institution, obstruct the hearing process, pose a risk to the personal safety of any person, or have the potential for prejudicing judicial proceedings, and subject to the following provisions:

(1) Access to Institutions. Access to Department of Corrections' institutions and local county jails shall be governed by the rules of the director of Corrections or the local county sheriff notwithstanding any provisions contained in these rules.

(2) Request for Television or Radio Coverage of Parole Hearings. All requests for coverage of parole hearings shall be made to the executive officer of the board no later than three working days before the hearing. Requests to attend life prisoner parole hearings may be submitted no earlier than two working days after the date of issuance of the monthly notice of life prisoner hearings. The request shall specify the name of the prisoner for whom the hearing will be conducted. Requests for coverage on a blanket basis will not be honored. Persons whose requests are not timely will not be considered for entry into the hearing room or for participation in the pooling arrangement.

(3) Decisions to Authorize Television and Radio Coverage of Parole Hearings. The executive officer of the board may authorize television and radio coverage of parole hearings.

(A) The executive officer of the board will grant authorization for television and radio coverage of a parole hearing to the station or network representative who makes the earliest request. Timely requests from more than one station or network will require the establishment of a pooling arrangement. If space limitations prevent the presence of both television and radio personnel in the hearing room, preference will be given to television personnel because of television's need for video equipment. Any television station or network given such preference will provide pooling services to any television or radio personnel denied entry to the hearing room.

(B) As a condition to granting authorization for television or radio coverage of a parole hearing the executive officer of the board may request that a copy of any recording made of the hearing be furnished to the board without cost.

(C) The executive officer of the board or a board hearing panel may deny, limit or terminate coverage of a hearing.

(4) Pooling Arrangements Among Television and Radio Representatives. All television and radio representatives who make a timely request to attend a hearing shall be provided with pool services. The station or network designated to be in the hearing room shall provide the service. Pooling arrangements among representatives shall be the responsibility of the station or network designated to be in the hearing room. In the absence of a pooling agreement or in the event of unresolved disputes relating to pooling agreements, the executive officer or a board hearing panel may deny, limit or terminate all or a portion of the coverage.

(5) Television and Radio Coverage Standards: Equipment and Personnel. Equipment that does not produce distracting sound or light shall be employed to cover parole hearings.



(A) Equipment from the designated station or network only shall be permitted into the hearing room.

(B) There shall be no modification or additions to lighting fixtures in the hearing rooms.

(C) No light or signal which is visible or audible to the hearing participants shall be used on any equipment to indicate whether it is operating.

(D) Video and audio equipment shall not be placed in or removed from the hearing room except before or after the hearing or during a normal recess.

(E) Television or radio personnel from the designated station or network shall assume an assigned, fixed position in the hearing room and shall act in a manner so as not to call attention to his activities. Camera persons shall not be permitted to move about during the hearing.

(F) Television and radio coverage of parole hearings by station and network personnel shall be conducted so as not to create a risk to the security of an institution, obstruct the hearing process, pose a risk to the personal safety of any person or have the potential for prejudicing judicial proceedings.

(6) Excluding and Restricting Television and Radio Personnel at Board of Prison Terms' Hearings.

(A) Television and radio personnel may be excluded from or restricted in their attendance at parole hearings by the executive officer of the board or a board hearing panel when the presence of such personnel would create a risk to the security of an institution, obstruct the hearing process, pose a risk to the personal safety of any person or have the potential for prejudicing judicial proceedings.

(B) To protect the attorney-client privilege and the right to effective assistance of counsel, there shall be no audio coverage of conferences between the prisoner and his attorney.

(C) There shall be no coverage of any portion of the hearing which is closed by the panel members, including but not limited to deliberations.

(D) There shall be no coverage of any portion of the hearing which is deemed confidential pursuant to California Code of Regulations, Title 15, Sections 2087 (d)(1) and 3321(a).

(7) Objections to Television or Radio Coverage at Board of Prison Terms' Parole Hearings.

(A) The consent of the prisoner or his attorney shall not be required for television or radio coverage of a parole hearing. However, the prisoner or the prisoner's attorney may request that the hearing panel deny, limit or terminate television or radio coverage.

(B) Objections to television or radio coverage of a hearing by a prisoner or his attorney shall be considered on a case by case basis recognizing that prisoners do not have an inherent right to restrict television or radio coverage of a parole hearing.

(C) In determining whether or not to grant an objection to television or radio coverage the executive officer or the hearing panel shall make its determination based on whether television or radio coverage of the hearing would create a risk to the security of the institution, obstruct the hearing process, pose a risk to the personal safety of any person or have the potential for prejudicing judicial proceedings.

NOTE: Authority cited: Sections 3041 and 3052, Penal Code. Reference: Sections 3041 and 3060, Penal Code; Sections 11126 and 11342.2, Government Code.

#### HISTORY:

1. New section filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).
2. Amendment of subsections (b)(6)(D) and (b)(7)(A) filed 1-19-90; operative 2-18-90 (Register 90, No. 5).

## Article 5. Individual Case Decisions

### 2040. Lifer Decisions, Public Threat.

Board decisions as to parole suitability shall include a statement that the board has reviewed all information received from the public and its conclusion as to whether the person would pose a threat to the public if released on parole.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3043.5, Penal Code.

#### HISTORY:

1. Repeal of Article 5 (Sections 2040-2045) and new Article 5 (Sections 2040-2044) filed 2-17-78; effective thirtieth day thereafter (Register 78, No. 7).
2. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
3. New section filed 3-11-87; effective thirtieth day thereafter (Register 87, No. 11).

### 2041. Review of Proposed Decisions.

(a) General. Board decisions, except decisions made at documentation hearings and decisions which do not require a hearing, are proposed decisions and shall be reviewed prior to their effective date in accordance with the following procedures. Except as provided in subdivision (j), an order for a new hearing vacates a proposed decision. Any other board decision may be reviewed after its effective date as provided in these rules or as specified by the chairperson.

(b) Review of Decisions at Revocation Hearings. Decisions made at revocation hearings shall be effective on the date signed by the panel. P&CSD shall immediately implement the decision. A decision may be reviewed within 10 days by the decision review unit. If the decision review unit disapproves the decision and orders a new hearing, the parolee shall be notified and, if necessary, the parole agent shall place a hold following the criteria of §§ 2600-2602. If the decision review unit modifies the decision without a new hearing, the parole agent shall implement the modified decision immediately.

(c) Decision Review Unit. The decision review unit shall be composed of at least one deputy commissioner as designated by the chairperson except as otherwise provided in this section.

(d) Review of Decisions from Mentally Disordered Offender Hearings. Proposed decisions made at Mentally Disordered Offender Certification, Placement, and Annual Review Hearings shall be implemented immediately by staff from the Department of Mental Health, P&CSD and the board. The decision shall be reviewed by the chief deputy commissioner or a designee. Within 20 days of the hearing, the chief deputy commissioner may: (i) affirm the proposed decision, (ii) order a new hearing, or (iii) modify the decision without a new hearing. No decision shall be modified without a new hearing if the modification would be adverse to the interests of the parolee. If the chief deputy commissioner disapproves the decision and orders a new hearing, the parolee shall be notified and, if necessary, the parole agent shall place a hold following the criteria specified in §§ 2600-2602. If the chief deputy commissioner modifies the decision without a new hearing, staff from the Department of Mental Health, P&CSD and the board shall implement the modified decision immediately. Decisions subject to this subdivision shall be given an effective date not later than 20 days from the hearing, unless expedited under subdivision (k).

(e) Review of Decisions from Sexually Violent Predator Probable Cause Hearings. Proposed decisions from probable cause hearings under the Sexually Violent Predator Program shall be implemented immediately by staff from the Department of



Mental Health, P&CSD, and the board. The decision shall be reviewed by the chief deputy commissioner or a designee. Within 10 days of the hearing, the chief deputy commissioner may: (i) affirm the proposed decision, (ii) order a new hearing, or (iii) modify the decision without a new hearing. No decision shall be modified without a new hearing if the modification would be adverse to the prisoner's interests. If the chief deputy commissioner disapproves the decision and orders a new hearing, the prisoner shall be notified and, if necessary, the parole agent shall place a hold following the criteria specified in §§ 2600-2602. If the chief deputy commissioner modifies the decision without a new hearing, staff from the Department of Mental Health, P&CSD and the board shall implement the decision immediately. Decisions subject to the subdivision shall be given an effective date no later than 10 days from the hearing.

(f) Review of ISL Parole Consideration and Rescission Hearings. Proposed decisions made at ISL Parole Consideration and Rescission Hearings shall be reviewed by the chief counsel or a designee. Within 90 days of the hearing, the chief counsel may: i) affirm the proposed decision, (ii) order a new hearing, or (iii) modify the proposed decision without a new hearing. No decision shall be modified without a new hearing if the decision would be adverse to the prisoner's interest. In cases where the chief counsel recommends a modification where the decision is adverse to the prisoner's interest, the matter shall be referred to the full board for review. No proposed decision shall be referred for a new hearing without a majority vote of the board following a public hearing. Before the matter is referred to the full board for review, the chief counsel or designee shall consult with the panel members who conducted the hearing. If any new information is received by the chief counsel or a designee that is adverse to a life prisoner, the new information will be forwarded to the prisoner and the prisoner's attorney. The prisoner and the attorney will be afforded an opportunity to respond in writing within a reasonable amount of time to the new information. Any proposed decision of the panel shall become final within 120 days of the hearing.

(g) Review of Serious Offender Hearings (Penal Code § 1170.2(b)). Proposed decisions made at Serious Offender Hearings shall be reviewed by the chief counsel or a designee. Within 60 days of the hearing, the chief counsel may: (i) affirm the proposed decision, (ii) order a new hearing or (iii) modify the proposed decision without a new hearing. No decision shall be modified without a new hearing if the modification would be adverse to the prisoner's interest. If any new information is received by the chief counsel or a designee that is adverse to the prisoner, the new information will be forwarded to the prisoner and the prisoner's attorney. The prisoner and the attorney will be afforded an opportunity to respond in writing within a reasonable amount of time to the new information. Decisions subject to the subdivision shall be given an effective date no later than 60 days from the hearing.

(h) Review of Life Prisoner Decisions. Proposed decisions made at hearings for prisoners serving a sentence of life with the possibility of parole may be reviewed by the chief counsel or a designee. Grants of parole shall be reviewed by the chief counsel or a designee. A random sample of parole denials, as determined by the board, shall be reviewed by the chief counsel or a designee. Within 110 days of the hearing, the chief counsel, or a designee, may: (i) affirm the proposed decision, (ii) order a new hearing, or (iii) modify the proposed decision without a new hearing. No decision shall be modified without a new hearing if the decision would be adverse to the prisoner's interest. If any new information is received by the chief counsel or a designee that is adverse to a life prisoner, the new information will be forwarded to

the prisoner and the prisoner's attorney. The prisoner and the attorney will be afforded an opportunity to respond in writing within a reasonable amount of time to the new information. In cases where the chief counsel recommends a modification where the decision is adverse to the prisoner's interest, the matter shall be referred to the full board for en banc review. No proposed decision shall be referred for a new hearing without a majority vote of the board following a public hearing. Before the matter is referred to the full board for review, the chief counsel or designee shall consult with the commissioners who conducted the hearing. Any proposed decision of the panel shall become final within 120 days of the hearing.

(i) New Hearings. For purposes of this section, the modification of a decision which would be adverse to the prisoner's or parolee's interest is one which would result in the denial of release from custody or require a longer period of confinement.

(j) Waiver of New Hearing. In cases where a new hearing is ordered, the prisoner or parolee is entitled to waive the right to the hearing and accept the modification suggested by the reviewing authority. In cases where the prisoner or parolee was represented by an attorney at the hearing, the prisoner shall be afforded 10 days to consult with counsel prior to the execution of the agreement to the proposed modification and the waiver of right to a hearing.

(k) Expedited Review. Any proposed decision which would result in the immediate release of a prisoner or parolee except one affecting a life prisoner, shall be reviewed, given an effective date, and released no later than 10 days from the date of the hearing.

(l) Split Vote. Any split vote on an ISL hearing panel shall be referred to the next immediate panel for another hearing.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2, 2964, 2966, 3041, 3042, 3060, 3063.5, 3063.6, 5075, and 5076.1, Penal Code; and Sections 6600-6601.3, Welfare and Institutions Code.

#### HISTORY:

1. New subsection (b) and relettering of subsections (b)-(f) to (c)-(g) filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
2. Amendment of subsection (e) filed 9-21-78 as an emergency; designated effective 9-25-78. Filed in the week of Register 78, No. 38, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
3. Amendment of subsection (f) filed 10-17-78 as an emergency; effective upon filing. Filed in the week of Register 78, No. 42, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
4. Certificate of Compliance as to filing of 9-21-78 filed 12-29-78 (Register 78, No. 52).
5. Certificate of Compliance filed 3-2-79 as to filing of 10-17-78 (Register 79, No. 9).
6. Amendment of subsection (g) and new subsection (h) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
7. Amendment of subsection (c) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
8. Amendment of subsections (a)-(c) filed 2-8-80; effective thirtieth day thereafter (Register 80, No. 6).
9. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
10. Amendment of subsections (c), (d)(2) and Note filed 12-20-93; operative 1-19-94 (Register 93, No. 52).
11. Amendment of section and Note filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).



12. Amendment of subsection (j) filed 4-15-2004 as an emergency; operative 5-1-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-30-2004 or emergency language will be repealed by operation of law on the following day.
13. Amendment of subsection (j) refiled 8-30-2004 as an emergency; operative 8-30-2004 (Register 2004, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-28-2004 or emergency language will be repealed by operation of law on the following day.
14. Amendment of subsection (j) refiled 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). A Certificate of Compliance must be transmitted to OAL by 4-26-2005 or emergency language will be repealed by operation of law on the following day.
15. Certificate of Compliance as to 12-27-2004 order transmitted to OAL 4-26-2005 and filed 6-8-2005 (Register 2005, No. 23).
16. Amendment of subsection (h) and Note filed 8-4-2008; operative 9-3-2008 (Register 2008, No. 32).

#### **2042. Review Criteria.**

The purpose of the decision review process is to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety. Criteria for disapproval of a decision include a determination by the board that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board, has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In deciding if a decision should be approved, board staff shall review the information available to the panel that made the decision and any information received as provided in § 2028.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code.

#### **HISTORY:**

1. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment of first paragraph and Note filed 9-23-96; operative 10-23-96 (Register 96, No. 39).
3. Amendment of section and Note filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

#### **2043. Final Date of Decisions.**

Any proposed decision granting, modifying, or denying a parole date for a life prisoner, exclusive of those made during progress hearings, shall become final no later than 120 days after the hearing at which the proposed decision was made. No life prisoner shall be released on parole prior to 60 days from the date of the hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 3042, Penal Code.

#### **HISTORY:**

1. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
2. Amendment filed 2-8-80; effective thirtieth day thereafter (Register 80, No. 6).
3. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
4. Amendment of section and Note filed 12-20-93; operative 1-19-94 (Register 93, No. 52).
5. Amendment of section heading, section and Note filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

#### **2044. En Banc Referral.**

(a) The full board shall review within a maximum of 60 days from the date of the hearing any proposed decision referred by a member of the hearing panel who requests the full board to consider the case, or from the date of receipt of a request for review by the Governor under the provisions of Penal Code section 3041.1. The case shall be referred to the executive officer or chief deputy commissioner for any preparation which is necessary prior to the meeting.

(b) In reviewing a decision upon the request of the Governor, a vote in favor of parole by a majority of the current board members shall be required to grant parole. If a majority of the board agrees with the decision reached by a majority of the panel, it shall approve the decision.

(c) If a majority of the board disagrees with the decision reached by a majority of the panel, the decision is vacated and the matter shall be scheduled for a new hearing. The decision from the new hearing shall be the decision in the case subject to § 2041.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 3041.1, Penal Code.

#### **HISTORY:**

1. Amendment filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).
2. Amendment filed 3-11-87; effective thirtieth day thereafter (Register 87, No. 11).
3. Amendment filed 2-4-91; operative 3-6-91 (Register 91, No. 11).
4. Amendment filed 10-14-2003; operative 11-13-2003 (Register 2003, No. 42).

### **Article 6. Appeals [Repealed]**

#### **HISTORY:**

1. Repealer of article 6, sections 2050-2057, filed 4-15-2004 as an emergency and operative 5-1-2004; refiled 8-30-2004 and 12-27-2004 as an emergency; Certificate of Compliance filed 6-8-2005 (Register 2005, No. 53). For prior history of section 2053, see Register 82, No. 52.

### **Article 7. Multijurisdiction Regulations**

#### **2071. Application of BPT Rules to Multijurisdiction Prisoners and Parolees.**

All BPT rules shall apply to all multijurisdiction prisoners and parolees unless modified by specific multijurisdiction rules.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Muszalski, 52 Cal. App. 3d 500 (1975).

#### **HISTORY:**

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### **2072. Determination of Multijurisdiction Status.**

(a) General. For the purpose of determining whether the multijurisdiction rules apply to any prisoner or parolee, the determinative factor shall be the individual's custody or parole status as of the date any board action is taken, or the date of the assertion of a right.

(b) Definitions.



- (1) Examples of "board actions" are:
  - (A) The scheduling of a hearing.
  - (B) Notification of a hearing or board decision.
  - (C) A hearing.
  - (D) A decision made without a hearing.
- (2) Examples of "assertion of a right" are:
  - (A) An attorney request.
  - (B) A central file review request.
  - (C) A hearing request.
  - (D) A rehearing request.

The multijurisdiction rules shall apply to any prisoner or parolee who becomes a multijurisdiction prisoner or parolee subsequent to any board action or to the assertion of any right. The multijurisdiction regulations shall no longer apply to a prisoner or parolee if the prisoner's or parolee's multijurisdiction status terminates subsequent to any board action or to the assertion of any right.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 11189(f) and 11190(f), Penal Code.

#### HISTORY:

1. Amendment of subsection (b)(2) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Repealer of subsection (b)(2)(C), subsection relettering and new Note filed 4-15-2004 as an emergency; operative 5-1-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-30-2004 or emergency language will be repealed by operation of law on the following day.
3. Repealer of subsection (b)(2)(C), subsection relettering and new Note refiled 8-30-2004 as an emergency; operative 8-30-2004 (Register 2004, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-28-2004 or emergency language will be repealed by operation of law on the following day.
4. Repealer of subsection (b)(2)(C), subsection relettering and new Note refiled 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). A Certificate of Compliance must be transmitted to OAL by 4-26-2005 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 12-27-2004 order transmitted to OAL 4-26-2005 and filed 6-8-2005 (Register 2005, No. 23).

#### **2073. Grievances for Multijurisdiction Prisoners and Parolees: General.**

Any multijurisdiction prisoner or multijurisdiction parolee who is dissatisfied with a decision by the Board regarding accommodation for a disability as defined in 42 U.S.C. section 12102 may grieve that decision in accordance with the process required by the *Armstrong v. Schwarzenegger* Revised Permanent Injunction. The prisoner or parolee may request help from a departmental or board employee or other party in filing the grievance, and a decision shall be provided prior to the hearing, if the grievance is received at least five working days before the scheduled hearing.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: *Armstrong v. Schwarzenegger*(2002), USDC-ND (No. C-094-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

#### HISTORY:

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

2. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
3. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
4. Amendment of section heading, section and Note filed 4-15-2004 as an emergency; operative 5-1-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-30-2004 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading, section and Note refiled 8-30-2004 as an emergency; operative 8-30-2004 (Register 2004, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-28-2004 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading, section and Note refiled 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). A Certificate of Compliance must be transmitted to OAL by 4-26-2005 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-27-2004 order transmitted to OAL 4-26-2005 and filed 6-8-2005 (Register 2005, No. 23).

#### **2074. Grievance Coordinator.**

(a) Multijurisdiction Prisoner. The grievance coordinator for multijurisdiction prisoners shall be:

(1) Federal compact, federal concurrent, federal consecutive prisoners; concurrent, consecutive, WICC, and ICC prisoners: A Classification Staff Representative of the Interstate Unit.

(2) Out-to-Court and California Agency Prisoners: The Classification and Parole Representative in the department institution designated by the department to maintain the prisoner's central file.

(b) Incarcerated Multijurisdiction Parolees. The grievance coordinator for multijurisdiction parolees incarcerated in a penal institution shall be:

(1) Multijurisdiction parolees incarcerated in a department institution: The Classification and Parole Representative (C&PR).

(2) Multijurisdiction parolees located in California: A Classification Staff Representative of the Interstate Unit.

(3) Multijurisdiction parolees located outside the State of California: A Classification Staff Representative of the Interstate Unit.

(c) Non-incarcerated Multijurisdiction Parolees. The grievance coordinator for parolees not incarcerated in a penal institution shall be:

(1) Concurrent parolees and cooperative parolees: A Parole Agent III or higher of the Interstate Unit.

(2) California concurrent parolees: A Parole Agent III or higher in the parolee's supervision region.

(3) California Agency parolees: A Parole Agent III or higher in the parolee's supervision region.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170(f), 1170.2, 3041, 3060, 11189(f) and 11190(f), Penal Code; *Armstrong v. Schwarzenegger*(2002), USDC-ND (No. C-094-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

#### HISTORY:

1. Amendment of subsections (a)(2) and (b)(3) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).



4. Amendment of section heading, section and Note filed 4-15-2004 as an emergency; operative 5-1-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-30-2004 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section heading, section and Note refiled 8-30-2004 as an emergency; operative 8-30-2004 (Register 2004, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-28-2004 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section heading, section and Note refiled 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). A Certificate of Compliance must be transmitted to OAL by 4-26-2005 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 12-27-2004 order transmitted to OAL 4-26-2005 and filed 6-8-2005 (Register 2005, No. 23).

**2075. Time Limits on Appeal: Refiling. [Repealed]**

**HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Repealer filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

## Article 8. Information Practices Act

**2080. General. [Repealed]**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

**HISTORY:**

1. New Article 8 (Sections 2080-2088, not consecutive) filed 1-25-78; effective thirtieth day thereafter (Register 79, No. 4).
2. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2081. Collection of Information.**

- (a) Sources. When collecting information from persons other than the subject of the information the board shall record the name, title, and address of the source.
- (b) Notice. Any form used to collect information from the subject of the information shall include:
  - (1) The unit of the board requesting the information;
  - (2) The title, business address, and telephone number of the executive officer;
  - (3) The authority for maintaining the information;
  - (4) Whether submission of the information is voluntary or mandatory;
  - (5) The consequences, if any, of not providing any or all of the information;
  - (6) The principal uses of the information;
  - (7) Any known or possible interagency or intergovernmental transfers;
  - (8) The person's right to review personal information.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

**HISTORY:**

1. Repealer of subsection (a) and relettering of subsections (b) and (c) to subsections (a) and (b) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2082. O.I.P. Notice.**

(a) Collecting Information. On June 1 of each year, the supervisor of each board unit which maintains information on persons shall submit the following information to the information practices coordinator:

- (1) The title of each records system maintained;
- (2) A brief description of the type of information maintained and the categories and approximate number of persons on whom files are maintained in each records system;
- (3) The major use of the information;
- (4) The retention period and disposal policies;
- (5) The general sources of the information;
- (6) The types of persons or agencies to whom the information is disclosed.

(b) Filing. Upon receipt of the information the Information Practices Act coordinator shall review the material and submit the information to the Office of Information Practices by July 1.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

**2083. Maintenance of Information.**

(a) General. Each unit of the board shall develop a purge schedule to ensure its records are accurate, relevant, timely and complete. Prior to transferring any record outside of state government, the unit supervisor shall review the file and correct, update, withhold or delete any information the supervisor knows or has reason to believe is inaccurate or untimely.

All units shall take appropriate safeguards to ensure the security of the records. Any organization which has a contract to maintain or use board records shall comply with the Information Practices Act and these rules.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

**2084. Access to Records.**

(a) General. Any person has the right to inquire whether the board maintains a record containing information about that person. Inquiries shall be submitted to the executive officer. All board employees shall cooperate to assist persons making inquiries.

(b) Responses to Inquiries. If any board unit maintains information concerning the person, the executive officer shall notify the person that the board maintains such information, that all personal information in the file may be reviewed, that requests for review are to be directed to the executive director, and that the information may be contested by submitting a request for amendment to the executive officer.

(c) Requests for Review. Any person may review all personal information concerning that person by submitting a request for review. The request shall be submitted in writing to the executive officer who shall arrange the review within 30 days of the request for active records, 60 days for inactive records. The person is also entitled to know the sources of the information, unless the source is confidential, and to review the accounting of disclosures of information in the file.

If the person requesting review is a prisoner or parolee and the information in the board file is not also in the central file, copies of the personal information, the identify of sources and the accountings of disclosures shall be sent to the C&PR or parole agent, who shall give the copies to the prisoner or parolee. For other persons requesting review of board files, the board shall permit a personal review of the file or send copies of the information if the person lives more than 50 miles from the location of the board files.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

**HISTORY:**

1. Amendment of subsection (b) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

**2086. Amendment of Records.**

(a) General. This section shall not apply to contesting board hearing decisions or the record of board hearings. Decisions and records of hearings may only be contested as provided in Sections 2050-2056. This section shall not apply to contesting information originated or collected by agencies other than the board.

(b) Initial Request for Amendment. The subject of information maintained by the board may request an amendment of the information by submitting a written and dated request for amendment to the executive officer. The request for amendment shall include a statement of no more than two pages explaining which specific information is claimed to be erroneous and what the correct information is. The executive officer shall review the request and the record and within 30 days of the date of receipt of the request either amend the record or notify the person that the record will not be changed. Any refusal to amend shall include the reason for the refusal, the procedures for review of the refusal, and a statement that the chairman will review the case upon request.

(c) Chairman's Review. Within 30 days of the executive officer's refusal to amend a record, the person may request review by the chairman by submitting a request to the chairman. The chairman shall complete the second review and issue a final decision within 30 days of the date of receipt of the request for a second review.

(d) Statement of Disagreement. If the record is not changed the person may submit to the executive officer a statement of not more than three pages setting forth the reasons for disagreement with the information in the file. The executive officer shall ensure that the statement of disagreement and the board's reasons for refusing to amend the record are included with the contested information and accompany any subsequent disclosure of that information. If the board files do not contain originals of the contested information, the board shall retain a copy of the statement and forward the original to be retained with the original information.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

**HISTORY:**

1. Amendment of subsection (a) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

**2087. Disclosure of Information.**

(a) General. Information about a person and contained in files maintained by the board shall be disclosed only as provided in this section. Only personal or confidential information collected or originated by the board may be disclosed. Any information contained in board files which was collected or originated by another agency or department shall not be disclosed, but the person requesting the information shall be referred to the originating agency. This section shall not apply to life prisoner parole consideration files. (See Penal Code Section 3042.)

(b) Nonpersonal Information.

(1) Disclosures. Nonpersonal information may be disclosed to anyone who has a legitimate reason for needing the information. Prior to disclosure of the information, the identity of the person requesting and the reason for needing the information shall be established.

In disclosing nonpersonal information the board shall ensure that the information is needed for a legitimate reason and that the person requesting it will use the information only as it pertains to that need.

(c) Personal Information.

(1) Disclosures.

(A) Personal information may be disclosed to persons other than the subject of the information as follows:

1. Consent.

a. To anyone if the subject of the information has given written voluntary consent within 30 days of the requested disclosure or within the time limits specified in the consent;

b. To the subject's guardian or conservator upon adequate verification that the person is the guardian or conservator;

c. To a member of a committee of the legislature or to a legislator if the subject has consented to the disclosure. Consent may be implied if the subject has written to the legislator requesting information or assistance.

2. Employees. To officials, employees and volunteers in the board or the department, if the disclosure is necessary for the performance of their functions and relates to a purpose for which the information was collected.

3. Public Agencies.

a. To a person or state agency if the transfer is necessary for the transferee to perform its statutory or constitutional duties, the transfer is compatible with a purpose for which the information was collected, and the transfer is listed in the OIP Notice;

b. To a federal or local agency when required by state law;

c. To a law enforcement agency when required for the investigation of unlawful activity, unless disclosure is otherwise prohibited by law;

d. To another person or governmental organization when necessary to obtain information for a board investigation of a failure to comply with a state law the board is responsible for enforcing;

e. To the State Archives as a record which has sufficient historical or other value to warrant its preservation, or for evaluation by the director of General Services or his designee to determine whether the record has other value.

4. Researchers.

a. To a person who has provided adequate written assurance that the information shall be used solely for statistical research if the information is disclosed in a manner that will not identify any subject of the information;

b. To the University of California or nonprofit educational institution which has provided adequate assurance of the need for the information, procedures for protecting the information, and assurance that the identity of any individuals shall not be disclosed in identifiable form.

5. Compelling Circumstances. Pursuant to a determination by the board that compelling circumstances exist which affect the health or safety of the subject if notice of the disclosure is transmitted to the subject of the information at his last known address.

6. Courts. To any person pursuant to a court order if prior to the disclosure, the board reasonably attempts to notify the subject of the disclosure and notice is not prohibited by law.

(d) Confidential Information.

(1) Definition. Confidential information includes information which, if disclosed, would:

(A) Endanger the health or safety of the subject or of other persons;

(B) Endanger the security of any department institution;

(C) Disclose personal or confidential information about a person other than the subject of the information when the information about the other person would not reasonably be part of the subject's knowledge or experience;



(D) Impede an investigation or preclude the department or board from accomplishing its statutory purpose or function in criminal, civil or administrative matters;

(E) Compromise the objectivity or fairness of the testing, appointment or promotion process;

(F) Release information required by statute to be withheld from the person to whom the information pertains.

(2) Disclosure. Confidential information may be disclosed as provided in subsection (c)(2).

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

#### HISTORY:

1. Repealer of subsections (b)(1) and (c)(1), and renumbering of subsections (b)(2) and (c)(2) to subsections (b)(1) and (c)(1) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2088. Accounting for Disclosures.

Each unit of the board shall maintain a record of disclosures of information to anyone other than the subject of the information or board or department employees. The accounting shall identify the information disclosed, the person or organization to whom the information was disclosed, the purpose of the disclosure and the date of the disclosure. Disclosures made by the investigative unit to other law enforcement officers while actively engaged in field duties do not require an accounting.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1798-1798.76, Civil Code.

## CHAPTER 2. TERM DECISIONS

### Article 1. Sentence Review [Repealed]

#### HISTORY:

1. Repealer of article 1, sections 2100-2107, filed 12-22-82 by OAL pursuant to Government Code section 11349.7(j) (Register 82, No. 52). For prior history of section 2107, see Register 82, No. 33.

### Article 2. Board Review of Department Denial of Good Time Credit

#### 2120. General.

DSL prisoners and ISL prisoners who have DSL release dates retroactively calculated are entitled to credit for good behavior and participation, and may earn work time credit. Good time and work time credit shall be deducted from the DSL release date. The department is responsible for deducting good time and work time credit from the sentence, and for establishing the procedures to deny good time or work time credit. If good time or work time credit is denied by the department, the initial appeal of that decision shall be handled through department appeal procedures.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2930-2932 and 5077, Penal Code.

#### HISTORY:

1. Repealer of Article 2 (Sections 2120-2123) and new Article 2 (Sections 2120-2121) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment of Article title filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
3. Amendment filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).

4. Change without regulatory effect amending section and NOTE filed 10-1-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).

#### 2121. Board Review.

(a) Submitting Request. When the department appeal is final, the prisoner may request board review by following the procedures set forth in sections 2050-2056, except that the appeal to the board must be filed within 10 days of notification that the department has denied the appeal.

(b) Decision. The reviewers may modify, affirm, or reverse the department's decision, or may order a hearing scheduled.

(c) Hearing Ordered.

(1) Panel. This hearing is conducted by a panel of three deputy commissioners.

(2) Prisoner Rights. The prisoner shall have the rights specified in sections 2245-2252 and 2254-2256. The record of the hearing shall be a tape recording.

(3) Information Considered. At this hearing, the panel shall consider the record established by the department, any information submitted by the prisoner under section 2249, and any information elicited at the hearing.

(4) Decision. The panel may modify, affirm, or reverse the department's decision.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2930-2932, 5076.1 and 5077, Penal Code.

#### HISTORY:

1. Amendment of subsection (a) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
2. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
3. Change without regulatory effect amending section and Note filed 10-1-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 40).

#### 2122. Review of Request. [Repealed]

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 2930-2932 and 5077, Penal Code.

#### HISTORY:

1. Repealer filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 38).

#### 2123. Hearing Ordered. [Repealed]

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 2930-2932 and 5077, Penal Code.

#### HISTORY:

1. Repealer filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 38).

### Article 3. Retroactive Sentencing Procedures [Repealed]

#### HISTORY:

1. Repealer of article 3, sections 2145-2167, filed 3-7-84 by OAL pursuant to Government Code section 11349.7(j) (Register 84, No. 10). For prior history of sections 2148, 2154, 2155, 2156, 2157, 2158, 2161, 2164, 2166 and 2167, see Register 82, No. 52.

### Article 4. Multijurisdiction Regulations [Repealed]

#### HISTORY:

1. Repealer of article 4, sections 2180-2181, filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46). For prior history of section 2180, see Register 82, No. 33.



## Article 5. Mentally Disordered Sex Offender Term Fixing [Repealed]

### HISTORY:

1. Repealer of article 5, sections 2185-2199, filed 12-22-82 by OAL pursuant to Government Code section 11349.7(j) (Register 82, No. 52). For prior history of section 2196, see Register 85, No. 46.

## CHAPTER 3. PAROLE RELEASES

### Article 1. General [Repealed]

#### 2230. General. [Repealed]

### HISTORY:

1. Repealer of Article 1 (Section 2230) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

### Article 2. Information Considered

#### 2232. General. [Repealed]

### HISTORY:

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2233. Documents Considered. [Repealed]

### HISTORY:

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2234. Testimony. [Repealed]

### HISTORY:

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2235. Confidential Information.

No decision shall be based upon information that is not available to the prisoner unless the information has been designated confidential under the rules of the department and is necessary to the decision.

(a) Reliability. The reliability of confidential information to be used shall be established to the satisfaction of the hearing panel. A finding of reliability shall be documented by the hearing panel. A hearing may be continued to establish the reliability of the information or to request the department to designate the information as nonconfidential.

(b) Documentation. If confidential information affected a decision the prisoner shall be notified of reports on which the panel relied.

#### 2236. Prisoner's Version.

The facts of the crime shall be discussed with the prisoner to assist in determining the extent of personal culpability. The board shall not require an admission of guilt to any crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner. Written material submitted by the prisoner under § 2249 relating to personal culpability shall be considered.

#### 2237. Resolving Factual Disputes. [Repealed]

### HISTORY:

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### 2238. Insufficient Information.

If, during the hearing, the hearing panel determines there is insufficient information available to determine any relevant or necessary fact, the hearing panel may continue the hearing up to 90 days. Appropriate staff shall be instructed to obtain the specific information which is needed as soon as possible. The prisoner is entitled to review this information under the procedures in § 2247 at least 10 days before the rescheduled hearing.

#### 2239. Battered Woman Syndrome.

At parole consideration hearings, the Board panel shall consider any information or evidence of Battered Woman Syndrome (BWS), as defined in section 2000(b), where it appears the criminal behavior was the result of that victimization. The panel shall state, on the record, the information which was considered pursuant to this section, and its effect, if any, on the parole decision. Information regarding BWS may be used by the panel to mitigate culpability for the offense for purposes of suitability for parole, and may be used as a reason for mitigating the base term. If sufficient information is not available to determine whether the criminal behavior was the result of that victimization, the panel shall refer the case for investigation.

NOTE: Authority cited: Sections 3041, 3052 and 5076.2(a), Penal Code. Reference: Sections 3041, 4801, 5075.5 and 5076.1, Penal Code; and Section 1107, Evidence Code.

### HISTORY:

1. New section filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

#### 2240. Psychological Risk Assessments for Life Inmates.

(a) Prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment will be performed by a licensed psychologist employed by the Board of Parole Hearings, except as provided in subsection (g).

(1) In the case of a life inmate who has already had an initial parole consideration hearing but for whom a Comprehensive Risk Assessment has not been prepared, a Comprehensive Risk Assessment shall be performed prior to the inmate's next scheduled subsequent hearing, unless a psychological report was prepared prior to January 1, 2009.

(2) Psychological reports prepared prior to January 1, 2009 are valid for use for three years, or until used at a hearing that was conducted and completed after January 1, 2009, whichever is earlier. For purposes of this section, a completed hearing is one in which a decision on parole suitability has been rendered.

(b) A Comprehensive Risk Assessment will be completed every five years. It will consist of both static and dynamic factors which may assist a hearing panel or the board in determining whether the inmate is suitable for parole. It may include, but is not limited to, an evaluation of the commitment offense, institutional programming, the inmate's past and present mental state, and risk factors from the prisoner's history. The



Comprehensive Risk Assessment will provide the clinician's opinion, based on the available data, of the inmate's potential for future violence. Board of Parole Hearings psychologists may incorporate actuarially derived and structured professional judgment approaches to evaluate an inmate's potential for future violence.

(c) In the five-year period after a Comprehensive Risk Assessment has been completed, life inmates who are due for a regularly scheduled parole consideration hearing will have a Subsequent Risk Assessment completed by a licensed psychologist employed by the Board of Parole Hearings for use at the hearing. This will not apply to documentation hearings, cases coming before the board en banc, progress hearings, three year reviews of a five-year denial, rescission hearings, postponed hearings, waived hearings or hearings scheduled pursuant to court order, unless the board's chief psychologist or designee, in his or her discretion, determines a new assessment is appropriate under the individual circumstances of the inmate's case.

The Subsequent Risk Assessment will address changes in the circumstances of the inmate's case, such as new programming, new disciplinary issues, changes in mental status, or changes in parole plans since the completion of the Comprehensive Risk Assessment. The Subsequent Risk Assessment will not include an opinion regarding the inmate's potential for future violence because it supplements, but does not replace, the Comprehensive Risk Assessment.

(d) The CDCR inmate appeal process does not apply to the psychological evaluations prepared by the board's psychologists. In every case where the hearing panel considers a psychological report, the inmate and his/her attorney, at the hearing, will have an opportunity to rebut or challenge the psychological report and its findings on the record. The hearing panel will determine, at its discretion, what evidentiary weight to give psychological reports.

(e) If a hearing panel identifies a substantial error in a psychological report, as defined by an error which could affect the basis for the ultimate assessment of an inmate's potential for future violence, the board's chief psychologist or designee will review the report to determine if, at his or her discretion, a new report should be completed. If a new report is not completed, an explanation of the validity of the existing report shall be prepared.

(f) If a hearing panel identifies at least three factual errors the board's chief psychologist or designee will review the report and determine, at his or her discretion, whether the errors invalidate the professional conclusions reached in the report, requiring a new report to be prepared, or whether the errors may be corrected without conducting a new evaluation.

(g) Life inmates who reside in a state other than California, including those under the Interstate Compact Agreement, may not receive a Comprehensive Risk Assessment, Subsequent Risk Assessment or other psychological evaluation for the purpose of evaluating parole suitability due to restraints imposed by other state's licensing requirements, rules of professional responsibility for psychologists and variations in confidentiality laws among the states. If a psychological report is available, it may be considered by the panel for purpose of evaluating parole suitability at the panel's discretion only if it may be provided to the inmate without violating the laws and regulations of the state in which the inmate is housed.

(h) The provisions of this section shall not apply to medical parole hearings pursuant to Penal Code section 3550 or applications for sentence recall or resentencing pursuant to Penal Code section 1170.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 3041.5, Penal Code.

#### HISTORY:

1. New section filed 10-25-2011; operative 11-24-2011 (Register 2011, No. 43).

### Article 3. Prisoner Rights

#### 2245. General.

At all hearings, prisoners located in California shall have the rights enumerated in 2245 through 2255. Prisoners located outside California shall have the rights specified in 2367. The prisoner is responsible for bringing to the attention of the hearing panel any issues pertaining to his rights under this article or any failure to comply with these rules. A prisoner may waive any of these rights, and any such waiver shall be documented. Additional rights applicable only to specific hearings are covered in the sections dealing with those hearings.

#### 2246. Notice.

A prisoner shall be notified as soon as possible of the week during which the hearing shall be held, but shall be notified no later than one month before the week during which the hearing will be held. Department staff shall provide notification of the hearing.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041.5, Penal Code.

#### HISTORY:

1. Amendment filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).

#### 2247. Disclosure.

A prisoner is entitled to review nonconfidential documents in the department central file. A prisoner is responsible for complying with department procedures for review of the documents and for making his request sufficiently early to permit his review of the documents at least 10 days before the week of the hearing. A prisoner shall have the opportunity to enter a written response to any material in the file.

A prisoner dissatisfied with the disclosure may appeal pursuant to department procedures. (See Title 15, California Administrative Code, Section 3003.)

A prisoner has the right to be present at the hearing, to speak on his own behalf, and to ask and answer questions. A prisoner refusing to attend the hearing shall be advised that a decision may be made without his presence. No panel shall consider information not available to the prisoner unless the information is designated confidential under § 2235.

#### 2249. Prisoner Presentation of Documents.

A prisoner shall have the right to present relevant documents to the hearing panel. The documents should be brief, pertinent, and clearly written. They may cover any relevant matters such as mitigating circumstances, disputed facts or release planning. A copy of the documents may be placed in the prisoner's central file.

#### 2250. Impartial Hearing Panel.

A prisoner is entitled to a hearing by an impartial panel. A prisoner may request the disqualification of a hearing panel member or a hearing panel member may disqualify himself.

(a) Grounds for Disqualification. A hearing panel member shall disqualify himself in the following circumstances:

(1) A close personal relationship exists between the hearing panel member and the prisoner or between their immediate families.



(2) The hearing panel member was involved in a past incident with the prisoner which might cause him to be prejudiced against the prisoner; for example, the hearing panel member was responsible for the arrest of the prisoner or the prisoner has assaulted the hearing panel member or a member of the hearing panel member's family.

(3) The hearing panel member is actually prejudiced against or biased in favor of the prisoner to the extent that he cannot make an objective decision.

(b) Decision. The hearing panel shall make and document the decision on disqualification if the issue has been raised. Disqualification shall not occur solely because the hearing panel member knew the prisoner in the past or has made a decision in the past affecting the prisoner.

#### **2251. Assistance.**

A prisoner may receive reasonable assistance in preparing for the hearing.

A prisoner who is unable to effectively communicate with the hearing panel due to language difficulties or a physical or mental defect shall be provided with appropriate assistance during the hearing. Department staff shall arrange for the necessary assistance prior to the hearing. If assistance has not been arranged and appears necessary during the hearing, the hearing panel shall request department staff to provide assistance and continue the hearing if necessary.

#### **2251.5. Americans with Disabilities Act.**

(a) No qualified individual with a disability as defined in 42 United States Code (U.S.C.) section 12102 shall, by reason of such disability, be excluded from participation in, or be denied the benefits of, the services, programs or activities of the board, or be subject to discrimination by the board.

(b) Any prisoner or parolee who believes that he or she is an individual with a qualifying disability, and believes that he or she has been denied reasonable accommodation by the board, may grieve that denial in accordance with the process required by the *Armstrong v. Schwarzenegger* Revised Permanent Injunction.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: *Pennsylvania Department of Corrections v. Yeskey*(1998) 118 S.Ct. 195; *Armstrong v. Schwarzenegger*(2002) USDC-ND (No. C-94-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. sections 12101, et seq.

#### **HISTORY:**

1. Renumbering of section 2057 to section 2251.5, including amendment of section heading, section and Note, filed 4-15-2004 as an emergency; operative 5-1-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-30-2004 or emergency language will be repealed by operation of law on the following day.
2. Renumbering of section 2057 to section 2251.5, including amendment of section heading, section and Note, refiled 8-30-2004 as an emergency; operative 8-30-2004 (Register 2004, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-28-2004 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of section 2057 to section 2251.5, including amendment of section heading, section and Note, refiled 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). A Certificate of Compliance must be transmitted to OAL by 4-26-2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-27-2004 order transmitted to OAL 4-26-2005 and filed 6-8-2005 (Register 2005, No. 23).

#### **2251.6. Filing a Grievance.**

The prisoner or parolee has the following responsibility in filing any grievance:

- (a) Contents of the Grievance.
- (1) The grievance shall include the name, department (CDC) number, and location of the prisoner or parolee.
- (2) The grievance shall be brief, pertinent, legible, and clearly written.
- (3) Specific grounds, relating to Americans with Disabilities Act issues only, must be clearly stated and all necessary documents and information must be attached to the application.
- (4) All grounds must be included in the same grievance.
- (5) The decision desired must be stated.
- (6) The application (grounds for grievance, the decision desired, and all arguments in support of the grievance) shall not exceed either the front side of six pages or the front and back sides of three pages of 8 and 1/2 by 11 inch paper. A BPT Form 1074 (Request for Reasonable Accommodation - Grievance Process) may be used, but is not required.
- (b) Assistance. Assistance in preparing the grievance may be sought from staff, attorneys assigned for revocation hearings, or others. The BPT Form 1074 shall be available to prisoners and parolees in custody and also at parole offices.
- (c) Submitting the Grievance. Grievances shall be submitted as soon as possible to the Board's ADA Coordinator (pre-hearing), the board's Quality Control Unit (post-hearing), or given to a staff person or attorney.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: *Armstrong v. Schwarzenegger*(2002) USDC-ND (No. C-94-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. Sections 12101, et seq.; and Section 5076.1, Penal Code.

#### **HISTORY:**

1. New section filed 6-8-2005; operative 6-8-2005 (Register 2005, No. 23).

#### **2251.7. Processing a Grievance.**

- (a) Timeframes. The Board's Americans with Disabilities Act Compliance Unit shall ensure that a complete grievance meeting the requirements of § 2251.6 be answered within 30 calendar days of receipt by the board's Quality Control Unit.
- (b) Board Actions. The board may take any of the following actions when answering a grievance.
  - (1) Order a New Hearing. Place the matter directly on the appropriate calendar if the denial of the requested accommodation violated the prisoner or parolee's due process or disability rights to access the parole proceeding [as that term is defined in the *Armstrong v. Davis* Remedial Plan, January 4, 2002]. Reasons for this action shall be stated. Following a new hearing, a copy of the new decision shall be forwarded to the board's Quality Control Unit.
  - (2) Deny. Deny the grievance if the decision denying the accommodation was harmless or the decision was reasonable under the circumstances of the case. The decision shall document the reasons for denial and include specific citation of policy.
  - (3) New Decision. Make a new decision if no new hearing is required and the decision will not adversely affect the prisoner or parolee.
  - (4) Dismiss. Dismiss the grievance if it should be handled through the Department of Corrections' Inmate and Parolee Appeals System (See Title 15, Division 3, California Code of Regulations), if the board has no jurisdiction over the issues being grieved, if the grievance is premature, or if the grievance was filed more than 90 days after the prisoner or parolee received written confirmation of the decision denying the accommodation.



(c) Exhaustion of Administrative Remedies. Administrative remedies with the board are exhausted after the prisoner or parolee has filed a grievance as specified in § 2251.5 et seq, and the above time limits have elapsed.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: *Armstrong v. Schwarzenegger*(2002) USDC-ND (No. C-94-2307-CW); Title II, Americans with Disabilities Act of 1990 (ADA), 104 Stat. 328, 42 U.S.C. Sections 12101, et seq.; and Section 5076.1, Penal Code.

**HISTORY:**

1. New section filed 6-8-2005; operative 6-8-2005 (Register 2005, No. 23).

**2252. Department Representative.**

A person designated by the department shall be present at life prisoner progress hearings to ensure that all facts relevant to the decision and any unresolved factual issues are presented. A department representative may attend any other board hearing.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041.5, Penal Code.

**HISTORY:**

1. Amendment filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).

**2253. Voluntary Waivers, Stipulations of Unsuitability, Postponements, and Continuances.**

(a) General. The rights and interests of all persons properly appearing before a board life parole consideration hearing are best served when hearings are conducted as scheduled. Occasional circumstances may require the delay of a scheduled hearing. It is the intention of the board to recognize the need and desirability to occasionally delay a scheduled hearing and to authorize said delays through a process of voluntary waiver or stipulation of unsuitability or to postpone or continue a scheduled life parole consideration hearing.

(b) Voluntary Waivers. A prisoner may request to voluntarily waive his or her life parole consideration hearing for any reason. Requests shall be made in writing to the board and shall state the reason for the request.

(1) In requesting a voluntary waiver, the prisoner shall be deemed to have waived his or her right to a life parole consideration hearing pursuant to sections 3041 and 3041.5 of the California Penal Code for the period specified in the waiver. A prisoner may waive his or her hearing for one, two, three, four or five years.

(2) A request for a voluntary waiver of a life parole consideration hearing should be submitted to the board at the earliest possible date that the prisoner becomes aware of the circumstances leading to the request, but shall be no later than 45 calendar days prior to the date of the scheduled hearing. A request made no later than 45 days prior to the scheduled hearing shall be presumed to be valid.

(3) A request for a voluntary waiver of a life parole consideration hearing submitted less than 45 calendar days prior to the scheduled hearing shall be presumed to be invalid and shall be denied by the board unless good cause is shown and the reason(s) given were not and could not reasonably have been known to the prisoner 45 calendar days prior to the scheduled hearing.

(4) In the event a request for a voluntary waiver is granted during the week of a scheduled life parole consideration hearing, in order to avoid future cost and inconvenience to properly appearing

parties, the board shall give the district attorney and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives the opportunity to give a statement on the record. If statements are taken, a transcript shall be made and shall be considered by the next hearing panel. The prisoner may waive his or her right to be present for such statements.

(5) Prisoners may waive no more than three consecutive life parole consideration hearings.

(c) Stipulations of Unsuitability.

(1) At any time prior to a life parole consideration hearing a prisoner may offer to stipulate to unsuitability for parole. An offer shall be submitted in writing to the board and shall state the reasons that support unsuitability. In considering an offer to stipulate to unsuitability the board shall review any written statements received from the district attorney and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives. The board retains discretion to accept or reject the offer to stipulate. Prisoners may offer to stipulate to unsuitability for 3, 5, 7, 10 or 15 years from the date of the scheduled hearing.

(2) If an offer to stipulate to unsuitability is made during the week of the scheduled life parole consideration hearing, the board shall give the district attorney and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives the opportunity to give a statement on the record. If statements are taken, a transcript shall be made and shall be considered by the next hearing panel. The prisoner may waive his or her right to be present for such statements.

(d) Postponements.

(1) The hearing panel chair or board executive officer may postpone a life parole consideration hearing, upon its own motion or at the request of a prisoner, due to the unavailability of a hearing panel; the absence or untimeliness of required department (CDCR) and/or board notices, documents, reports or required prisoner accommodations; or exigent circumstances such as illness of attending parties, natural disasters or institutional emergencies.

(2) A prisoner may request that the board postpone a life parole consideration hearing to resolve matters relevant to his or her parole consideration for reasons not set forth in subdivision (1) of this subsection. The board may grant a postponement only upon the affirmative showing of good cause on the part of the prisoner and only if the prisoner did not and could not have known about the need for the postponement earlier than when he or she made the postponement request. Good cause is a prisoner's excused inability to obtain essential documents or other material evidence or information despite his or her diligent efforts.

(3) A postponed hearing shall be rescheduled at a date consistent with resolution of the issue causing the postponement, the need to provide notice to affected parties, and panel availability. When the postponed hearing is rescheduled, it shall not displace a previously scheduled hearing.

(4) If a postponement is granted during the week of the scheduled hearing, the board shall give the district attorney, and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives the opportunity to give a statement on the record. Exercising this option will not preclude the speaker from making a statement at subsequent parole consideration hearings. This statement shall be made available for consideration by subsequent hearing panels. If statements are taken, a transcript shall be made and a copy provided to the prisoner.

(e) Continuance. After the commencement of a life parole consideration hearing, the hearing panel chair may continue a hearing only upon a showing of good cause which was unknown, and could not reasonably have been known by the party requesting the continuance, prior to the commencement of the hearing.

(1) In considering a continuance, the hearing panel chair shall weigh the reasons and the need for the continuance and any



convenience to the board, department, or appearing parties and determine what will best serve the interest of justice.

(2) If a life parole consideration hearing is continued, the board shall attempt to impanel the same panel members when the hearing is reconvened. However, the board may, in its discretion, reconvene a new panel and commence a new hearing.

(3) In the event of a continuance, the district attorney and the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives may elect to give a statement on the record before the hearing is continued, in lieu of giving a statement when the hearing resumes. This statement shall be made available to subsequent hearing panels.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2, 3041 and 3041.5, Penal Code; In re Rutherford (Super. Ct. Marin County, No. SC135399A) February 19, 2008; and Proposition 9 (Marsy's Law) December 13, 2008.

#### HISTORY:

1. Renumbering of Section 2253 to Section 2254 filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Renumbering of Section 2254 to Section 2253 filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
3. Repealer and new section heading and section and amendment of Note filed 6-25-2004 as an emergency; operative 6-28-2004 (Register 2004, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-26-2004 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 6-25-2004 order, including amendment of subsections (b)(1) and (c)(1), transmitted to OAL 10-26-2004 and filed 12-9-2004 (Register 2004, No. 50).
5. Amendment of section heading, section and Note filed 9-3-2008; operative 11-1-2008 (Register 2008, No. 36).
6. Amendment of subsection (b)(1), repealer of subsections (b)(1)(A)-(B), amendment of subsections (b)(4) and (c)(1), repealer of subsections (c)(1)(A)-(B), amendment of subsections (c)(2), (d)(4) and (e)(3) and amendment of Note filed 8-11-2009; operative 8-11-2009 pursuant to Government Code section 11343.4 (Register 2009, No. 33).

#### **2254. Record of Hearing.**

A record (a verbatim transcript, tape recording or written summary) shall be made of all hearings. The record of the hearing shall include or incorporate by reference the evidence considered, the evidence relied on, and the findings of the hearing panel with supporting reasons. The prisoner is entitled to a copy of the record of the hearing upon request.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2 and 3041.5, Penal Code.

#### HISTORY:

1. Renumbering of Section 2254 to Section 2255 filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Renumbering of Section 2255 to Section 2254 filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

#### **2255. Written Statement of Decision.**

Every prisoner and his attorney if he was represented by an attorney at a hearing shall receive a copy of the decision specifying the decision, the information considered and the reasons for the decision.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2 and 3041.5, Penal Code.

#### HISTORY:

1. Amendment filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Renumbering of Section 2255 to Section 2256 filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Renumbering of Section 2256 to Section 2255 filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

#### **2256. Attorney.**

a) General. A prisoner or parolee may be represented by an attorney at specific hearings. The sections concerning particular hearings and the prisoner's or parolee's rights at those hearings specify whether the prisoner or parolee may be represented by an attorney.

(b) Waiver. If a prisoner or parolee is entitled to representation by an attorney at a hearing, the prisoner or parolee may waive the right to an attorney. Department staff shall document the waiver.

(c) Indigents. If a prisoner or parolee is entitled to be represented by an attorney at a hearing, an attorney will be provided at state expense if the prisoner or parolee cannot afford to retain private counsel. A prisoner or parolee is presumed able to afford an attorney if the prisoner or parolee has one thousand five hundred dollars (\$1,500.00) or more in cash, institutional trust account, savings account, checking account or any combination of cash and accounts. A prisoner or parolee with one thousand five hundred dollars (\$1,500.00) must show that he or she has been unable to obtain an attorney for that amount before an attorney will be appointed at state expense.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Gagnon v. Scarpelli, 411 U.S. 778 (1973); Sections 1170.2 and 3041.7, Penal Code.

#### HISTORY:

1. Renumbering of former Section 2253 to Section 2254 and new section filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Renumbering of Section 2253 to Section 2256 filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

### Article 4. Parole Consideration Procedures for Life Prisoners and Nonlife 1168 Prisoners

#### **2265. General. [Repealed]**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3041.7, 3042 and 3046, Penal Code.

#### HISTORY:

1. Amendment filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
3. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
4. Amendment filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
5. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
6. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### **2266. Information Considered. [Repealed]**

#### HISTORY:

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).



**2267. Recommendation Hearing. [Repealed]**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041, 3042, 3063.5, 3063.6, and 5076.1, Penal Code.

**HISTORY:**

1. Amendment of subsection (c) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsection (b) filed 9-21-78 as an emergency; designated effective 9-25-78. Filed in the week of Register 78, No. 38, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
3. Certificate of Compliance filed 12-29-78 (Register 78, No. 52).
4. Amendment of subsection (d) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
5. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2268. Initial Parole Hearing.**

(a) Decision. At the conclusion of the hearing the prisoner shall receive a copy of the proposed decision. If the panel's decision is to grant parole, the proposed decision shall state the period of confinement established, the conditions which must be met in order to be released after serving that period of confinement and the consequences of a failure to meet such conditions. If the panel decision is to deny parole, the proposed decision shall state that parole has been denied.

(b) Multiple Year Denials. In cases in which the panel may deny a subsequent parole hearing for more than one year, it shall utilize the criteria specified in sections 2281 or 2402 as applicable. It shall make specific written findings stating the bases for the decision to defer the subsequent suitability hearing for two, three, four, or five years. If the board defers a hearing for five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years, at which time the deputy commissioner may direct that a hearing be held within one year if the inmate has been disciplinary free and programming in accordance with board direction since the last hearing. The board shall notify the prisoner in writing of the deputy commissioner's decision.

(c) Review. All proposed decisions shall be reviewed as provided in Section 2041. If the decision is approved or modified without a new hearing, the board shall send a copy of the decision to the prisoner within 20 days of the hearing. If a decision to deny parole is approved, the approved decision shall include the panel's reasons for the denial of parole, activities which might be of benefit during imprisonment, and when the prisoner can expect to have another parole consideration hearing. If the decision is disapproved and vacated, a copy of the disapproved decision and the reasons for ordering a new hearing shall be sent to the prisoner within 30 days.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3041.7 and 5076.1, Penal Code.

**HISTORY:**

1. Amendment of subsections (a) and (c) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsections (b), (d) and (e) filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
3. Amendment of subsection (a) filed 7-31-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 31).
4. Certificate of Compliance filed 10-27-78 as to 7-21-78 emergency amendment of subsections (b), (d) and (e) (Register 78, No. 43).
5. Amendment of subsection (e) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
6. Amendment of subsection (a) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

7. Amendment of subsection (d) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
8. Repealer of subsections (a)-(d) and relettering of subsection (e) to subsection (a) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
9. Repealer of subsection (a) designation only (no text change) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
10. Designation of subsection (a), new subsection (b), designation and amendment of subsection (c) and amendment of Note filed 3-14-95 as an emergency; operative 3-14-95 (Register 95, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-12-95 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 3-14-95 order, including amendment of subsection (a), transmitted to OAL 7-11-95 and filed 8-22-95 (Register 95, No. 34).

**2269. Progress Hearing.**

(a) General. At this hearing the hearing panel shall determine whether a previously set parole date should be advanced because of the prisoner's conduct in prison or any change in circumstances under the criteria in Section 2290.

(b) Scheduling. This hearing shall be scheduled by department staff according to the following schedule:

(1) If the parole date is less than 10 months from the date of the last parole consideration hearing, no progress hearing shall be scheduled.

(2) If the parole date is between 10 and 14 months of the date of the last parole consideration hearing, the progress hearing shall be scheduled during the sixth month after the parole consideration hearing.

(3) If the parole date is between 14 and 18 months of the date of the last parole consideration hearing, the progress hearing shall be scheduled during the ninth month after the parole consideration hearing.

(4) If the parole date is between 18 and 26 months from the date of the last parole consideration hearing, the progress hearing shall be scheduled during the twelfth month after the parole consideration hearing.

(5) If the parole date is between 26 and 34 months of the date of the last parole consideration hearing, the progress hearing shall be scheduled during the 18th month after the parole consideration hearing.

(6) If the parole date is between 34 and 50 months of the date of the last parole consideration hearing, the progress hearing shall be scheduled during the 24th month after the parole consideration hearing.

(7) If the parole date is 50 months or more from the date of the last parole consideration hearing, the progress hearing shall be scheduled during the 36<sup>th</sup> month after the parole consideration hearing.

(8) Any time department or board staff believes an earlier parole date would be appropriate the case may be placed on the miscellaneous proceedings calendar with documentation of the reasons for requesting a progress hearing. The board may deny the request or order a progress hearing scheduled.

(c) Prisoner Rights. The prisoner shall have the rights specified in Sections 2245-2255 and the right to have a department representative present at the hearing. The record of the hearing shall be a verbatim transcript.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041, 3041.5 and 5076.1, Penal Code; In re Stanley (1976) 54 Cal.App.3d 1030.



**HISTORY:**

1. Amendment of subsections (a), (c) and (d) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. Amendment of subsection (a) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Editorial correction (Register 79, No. 38).
4. Amendment of subsection (c) filed 2-8-80; effective thirtieth day thereafter (Register 80, No. 6).
5. Amendment of subsection (c) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
6. Repealer of subsection (b) and relettering of subsections (c) and (d) to (b) and (c) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2269.1. Documentation Hearings.**

(a) General. All life prisoners shall have hearings prior to the minimum eligible parole date.

(1) At these hearings the panel shall review the prisoner's activities and conduct considering the criteria in §§ 2290 and 2410 and document activities and conduct pertinent to granting or withholding postconviction credit. When the board establishes a parole date the panel shall consider this information and determine whether to grant or withhold postconviction credit for time served prior to the date of the hearing at which parole is granted. Once the parole date is established, these prisoners shall have progress hearings as provided in § 2269.

(2) In order to identify potential cases of Battered Woman Syndrome (BWS), the deputy commissioner or commissioner conducting a documentation hearing shall refer any case to the executive officer in which the prisoner appears to have suffered the effects of BWS as defined in § 2000(b). The purpose of the investigation is to determine whether it appears the criminal behavior was the result of that victimization.

(b) Panel. This hearing shall be conducted by a one person panel and the panel member shall be a commissioner or deputy commissioner.

(c) Scheduling. This hearing shall be scheduled by department staff. The documentation hearing shall be held during the 36th month after the life term starts (See §§ 2289 and 2411(c)). Time during which service of the life term is tolled because the prisoner is serving a determinate term shall not be included in determining the scheduling of documentation hearings.

NOTE: Authority cited: Sections 3041 and 5076.2, Penal Code. Reference: Sections 3040, 3041, 3041.5, 4801 and 5076.1, Penal Code; and In re Stanley (1975) 54 Cal.App.3d 1030.

**HISTORY:**

1. New section filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
2. Amendment of subsection (a) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. Amendment of subsections (a) and (b) filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).
4. Amendment of subsection (a) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
5. Amendment of subsection (b) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
6. Amendment splitting former subsection (a) into subsections (a)-(a)(1), new subsection (a)(2), and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.

7. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).
8. Amendment of section and Note filed 6-17-2003; operative 7-17-2003 (Register 2003, No. 25).

**2270. Subsequent Parole Hearing.**

(a) General. At this hearing each prisoner who was previously denied parole shall be reconsidered for parole in the same manner as at the initial parole hearing. The hearing panel shall consider the same information considered at the initial parole hearing and any information developed since the last hearing (Sections 2281-2291).

(b) Panel. This hearing is conducted by a panel of three, at least two of whom shall be commissioners. At least one person on the new panel shall have been present at the last parole consideration hearing unless it is not feasible to do so.

(c) Scheduling. This hearing shall be scheduled as provided in Penal Code Section 3041.5.

(d) Multiple Year Denials. In cases in which the panel may deny a subsequent parole hearing for more than one year, it shall utilize the criteria specified in sections 2281 or 2402 as applicable. It shall make specific written findings stating the bases for the decision to defer the subsequent suitability hearing for two, three, four, or five years. If the board defers a hearing for five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years, at which time the deputy commissioner may direct that a hearing be held within one year if the inmate has been disciplinary free and programming in accordance with board direction since the last hearing. The board shall notify the prisoner in writing of the deputy commissioner's decision.

(e) Prisoner Hearing Rights. The prisoner shall have the rights specified in Sections 2245-2256. Notice of the hearing shall be given as soon as possible, but no later than 7 days before the hearing. The record of the hearing shall be a verbatim transcript.

(f) Prisoner Post Hearing Rights. The prisoner shall have the rights specified in Section 2268. Notice of the hearing shall be given as soon as possible, but no later than 7 days before the hearing. The record of the hearing shall be a verbatim transcript.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3041.7, 3042, 5075, and 5076.1, Penal Code.

**HISTORY:**

1. Amendment of subsection (a) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsections (a) and (c) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
3. Amendment of subsection (e) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
4. Amendment of subsection (d) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
5. Amendment of subsection (c) filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).
6. Amendment of subsection (e) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
7. Amendment of subsection (b) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
8. New subsection (d), subsection relettering and amendment of Note filed 3-14-95 as an emergency; operative 3-14-95 (Register 95, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-12-95 or emergency language will be repealed by operation of law on the following day.



9. Certificate of Compliance as to 3-14-95 order, including amendment of subsections (e)-(f), transmitted to OAL 7-11-95 and filed 8-22-95 (Register 95, No. 34).

**2271. Parole Consideration for Nonlife 1168 Prisoners.**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041, Penal Code.

**HISTORY:**

1. Amendment of subsection (c) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Repealer of Section 2271 and renumbering of Section 2272 to Section 2271 filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29). For history of former Section 2272, see Register 78, No. 14.
3. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
4. Amendment filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
5. Amendment of subsection (a) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
6. Repealer of subsections (b) and (e), and relettering of subsections (c) and (d) to subsections (b) and (c) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
7. Repealer filed 3-11-87; effective thirtieth day thereafter (Register 87, No. 11).

**2272. Hearings for Prisoners with New Criminal or Disciplinary Charges Pending.**

(a) Initial Parole Hearing and Subsequent Parole Hearing. A prisoner with new criminal or disciplinary charges pending prior to the initial parole hearing or subsequent parole hearing shall be scheduled for the hearing as provided in this article. If it is determined during the course of the hearing that a decision regarding parole cannot be made because of the pending charges, the hearing panel shall continue the hearing. Department staff shall place the case on the miscellaneous proceedings calendar every 90 days from the date of the originally scheduled hearing with a report of the status of the case. Following conclusion of the criminal or disciplinary charges, the case shall be scheduled for the next regular calendar.

(b) Progress Hearing. Department staff shall postpone the progress hearing of any prisoner who has new criminal or serious disciplinary charges pending immediately prior to a regularly scheduled progress hearing. Department staff shall place the case on the miscellaneous proceedings calendar every 90 days from the date of the originally scheduled hearing including a report of the status of the case. Following conclusion of the criminal or disciplinary charges, the case shall be scheduled for the next regular calendar.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041 and 3041.5, Penal Code.

**HISTORY:**

1. Renumbering of Section 2273 to Section 2272 filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
2. Amendment of subsection (a) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

**2273. Hearings for Prisoners with Changes in Legal Status.**

Changes in legal status include: a final court decision altering the prisoner's commitment status, modification of the judgment or abstract of judgment, and new commitments.

(a) Before Initial Parole Hearing. The change in legal status shall be considered at the initial parole hearing as regularly scheduled or as would be scheduled by the change in legal status.

(b) After Initial Parole Hearing. If a prisoner's legal status changes after the initial parole hearing, department staff shall immediately schedule the prisoner for a progress or subsequent parole hearing as appropriate.

(c) New Commitment. If a prisoner with a previously established parole date receives a new commitment to state prison the parole date shall be rescinded. No hearing or other board action is required. The department shall record the rescission of the parole date on the grounds that the prisoner has received a new commitment. The prisoner may appeal the rescission only on the grounds that he is not the person sentenced to state prison by the new judgment.

If the new commitment is for a life sentence, the prisoner shall be scheduled for a documentation hearing during the 36th month after commencement of the life term (§ 2269.1) and a parole consideration hearing during the 13th month prior to the new minimum eligible parole date (§ 2268(c)).

If the new commitment is for an indeterminate sentence, the prisoner shall be scheduled for a parole consideration hearing one month before the minimum eligible parole date for the new commitment offense or within 120 days if the M.E.P.D. is within 120 days of receipt of the new commitment (§ 2304).

If the new commitment is for a determinate term, the parole consideration hearing shall be conducted within 60 days of receipt of the new commitment.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041, 3041.5 and 3041.7, Penal Code.

**HISTORY:**

1. Renumbering of Section 2274 to Section 2273 filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
2. New subsection (c) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
3. Amendment of subsection (c) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
4. Amendment of subsection (c) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
5. Amendment of subsection (c) filed 6-17-2003; operative 7-17-2003 (Register 2003, No. 25).

**2274. Adult Authority Parole Dates.**

A life prisoner who has a parole date set by the Adult Authority which is within 60 days of a scheduled parole consideration hearing under this article shall not have a parole hearing. The prisoner shall be released on the parole date set by the Adult Authority or earlier if an advancement is granted under section 2359.

If a panel advances an Adult Authority parole date to within 60 days of the parole consideration hearing, the prisoner shall be released on the Adult Authority date as advanced.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code.

**HISTORY:**

1. New section filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

**2275. Implementation of Penal Code Section 3000.1.**

(a) General. As required by Penal Code section 3000.1, when parole is revoked for any prisoner sentenced under Penal Code section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the prisoner shall be given a



hearing as provided in Penal Code sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole.

(b) Panel. This hearing shall be conducted by a two-person panel comprised of one commissioner and one deputy commissioner.

(c) Disposition. At this hearing, the panel shall release the prisoner within one year of the date of the revocation, unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration, or unless there is a new prison commitment following a conviction. If the panel concludes that a more lengthy period of incarceration is warranted, then notwithstanding the provisions of paragraph (2) of subdivision (b) of section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is otherwise ineligible for parole release.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3000.1, Penal Code.

#### HISTORY:

1. New section filed 10-6-2006 as an emergency; operative 10-6-2006 (Register 2006, No. 40). A Certificate of Compliance must be transmitted to OAL by 2-5-2007 or emergency language will be repealed by operation of law on the following day.
2. Repealed by operation of Government Code section 11346.1(g) (Register 2007, No. 41).
3. New section filed 1-17-2008 as an emergency; operative 1-17-2008 (Register 2008, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2008 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-17-2008 order transmitted to OAL 5-14-2008 and filed 6-23-2008 (Register 2008, No. 26).

### Article 5. Parole Consideration Criteria and Guidelines for Life Prisoners

#### 2280. General.

A life prisoner shall be considered for parole for the first time at the initial parole consideration hearing. At this hearing, a parole date shall be denied if the prisoner is found to be unsuitable for parole under s 2281(c). A parole date shall be set if the prisoner is found to be suitable for parole under s 2281(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude in respect to the threat to the public. In setting the parole date, the panel shall consider the Sentencing Rules for the Superior Courts as they specifically relate to life prisoners. The panel shall also consider the criteria and guidelines set forth in this article for determining the suitability for parole and the setting of parole dates, considering the number of victims of the crime for which the prisoner was sentenced and any other circumstances in mitigation or aggravation.

NOTE: Authority cited for Article 5 (Sections 2280-2292): Section 5076.2, Penal Code. Reference: Section 3041, Penal Code.

#### HISTORY:

1. Repealer of Article 5 (Sections 2280-2297) and new Article 5 (Sections 2280-2292) filed 7-31-78 as an emergency; effective upon filing. Certificate of Compliance included (Register 78, No. 31). For history of former Article 8, see Registers 78, No. 14, and 77, No. 44.
2. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

#### 2281. Determination of Suitability.

(a) General. The panel shall first determine whether a prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) Information Considered. All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's: social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

(c) Circumstances Tending to Show Unsuitability. The following circumstances each tend to indicate unsuitability for release. These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

(A) Multiple victims were attacked, injured or killed in the same or separate incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.

(E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(d) Circumstances Tending to Show Suitability. The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.



(3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or the prisoner has given indications that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress had built over a long period of time.

(5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(6) Lack of Criminal History. The prisoner lacks any significant history of violent crime.

(7) Age. The prisoner's present age reduces the probability of recidivism.

(8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

NOTE: Authority cited: Sections 3041, 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 4801, Penal Code.

#### HISTORY:

1. Amendment of subsection (c) filed 6-28-79; effective thirtieth day thereafter (Register 79, No. 26).
2. Amendment of subsection (d)(7) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).

3. New subsection (d)(5), subsection renumbering, and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

#### **2282. Base Term.**

(a) General. The panel shall set a base term for each life prisoner who is found suitable for parole. The base term shall be established solely on the gravity of the base offense, taking into account all of the circumstances of that crime. The base offense is the most serious of all life offenses for which the prisoner has been committed to prison.

The base term shall be established by utilizing the appropriate matrix of base terms provided in this section for the base offense of which the prisoner was convicted. The panel shall determine the category most closely related to the circumstances of the crime. The panel shall impose the middle base term reflected in the matrix unless the panel finds circumstances in aggravation or mitigation.

If the panel finds circumstances in aggravation or in mitigation as provided in § 2283 or 2284, the panel may impose the upper or lower base term provided in the matrix, stating the specific reason for imposing such a term. A base term other than the upper, middle or lower base term provided in the matrix may be imposed by the panel if justified by the particular facts of the individual case.



## CIRCUMSTANCES

2282(b) First Degree Murder	A. Indirect	B. Direct or Victim Contribution	C. Severe Trauma	D. Torture
Penal Code § 189 (in years and does not include post conviction credit as provided in § 2290)	Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing.	Death was almost immediate or resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victim acting in defense of self or property.	Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	Victim was subjected to the prolonged infliction of physical pain through the use of nondeadly force prior to act resulting in death.
1. Participating Victim Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred; e.g., crime partner, drug dealer, etc.	8-10-12	10-12-14	11-13-15	13-15-17
V I C T I M II. Prior Relationship Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.	10-12-14	12-14-16	13-15-17	15-17-19
III. No Prior Relationship Victim had little or no personal relationship with prisoner, or motivation for act resulting in death was related to the accomplishment of another crime; e.g., death of victim during robbery, rape, or other felony.	11-13-15	13-15-17	14-16-18	16-18-20
IV. Threats to Public Order or Murder for Hire The act resulting in the victim's death constituted a threat to the public order include the murder of a police officer, prison guard, public official, fellow patient or prisoner, any killing within an institution, or any killing where the prisoner hired and/or paid another person to commit the offense.	13-15-17	15-17-19	16-18-20	18-20-22

## SUGGESTED BASE TERM



## (c) Matrix for Kidnapping for Robbery or Ransom.

## CIRCUMSTANCES

2282(c) <i>Kidnap for Robbery or Ransom</i>		A. Minor Movement	B. <i>Extensive Movement</i>	C. <i>Hostage</i>	D. <i>Planning</i>
Penal Code § 209 (in years and does not include post conviction credit as provided in § 2290)		Movement was of short duration and resultant location would not substantially increase risk of harm	Death was almost immediate <i>or</i> resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victim acting in defense of self or property.	Victim was taken as hostage.	The crime involved intricate prior planning..
<i>I. Minor Injury</i>		8-10-12	9-11-13	10-12-14	11-13-15
Victim unharmed or received minor injury.					
<b>V I C T I M</b>	<i>II. Victim Assaulted</i>	9-11-13	10-12-14	11-13-15	12-14-16
	Victim was sexually assaulted or otherwise seriously injured or assaulted.				
<i>III. Major Injury</i>		10-12-14	11-13-15	12-14-16	13-15-17
Victim's major injuries required extensive treatment or the victim was seriously disabled.					
<i>IV. Death Victim Died</i>		Use matrix provided in Section 2282(b).			

## SUGGESTED BASE TERM

## (d) Matrix for Other Life Crimes.

In considering crimes for which no matrix is provided, the panel shall impose a base term by comparison to offenses of similar gravity and magnitude in respect to the threat to the public, and shall consider any relevant judicial council rules and sentencing information as well as any circumstances in aggravation or mitigation of the crime.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041, Penal Code.

## HISTORY:

1. Amendment of subsection (b), Categories II and IV, filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).

**2283. Circumstances in Aggravation of the Base Term.**

(a) General. The panel shall impose the upper base term or another term longer than the middle base term upon a finding of aggravating circumstances. Circumstances in aggravation of the base term for any life crime include:

- (1) The crime involved some factors described in the appropriate matrix in a category higher on either axis than the categories chosen as most closely related to the crime;
- (2) The victim was particularly vulnerable due to age or physical or mental condition;

(3) The prisoner occupied a position of leadership or dominance over other participants in the commission of the crime, or the prisoner induced others to participate in the commission of the crime;

(4) The prisoner has a history of criminal behavior for which the term is not being enhanced under Section 2286;

(5) During the commission of the crime the prisoner had a clear opportunity to cease but instead continued;

(6) The prisoner has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the prisoner is currently committed to prison;

(7) The prisoner had a special relationship of confidence and trust with the victim, such as that of employee-employer;

(8) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;

(9) The prisoner was on probation or parole or was in custody or had escaped from custody at the time the crime was committed.

(b) Specific Circumstances in Aggravation of First Degree Murder (Penal Code Section 187) Include:

(1) The murder was wanton and apparently senseless in that it was committed after another crime occurred and served no purpose in completing that crime;

(2) The corpse was abused, mutilated or defiled;



(3) The prisoner went to great lengths to hide the body or to avoid detection;

(4) The murder was committed to preclude testimony of potential or actual witnesses during a trial or criminal investigation;

(5) The murder was committed to prevent discovery of another crime;

(6) The murder was committed by a destructive device or explosive; (7) There were multiple victims for which the term is not being enhanced under section 2286;

(c) Specific Circumstances in Aggravation of Kidnapping for Robbery or Ransom (Penal Code Section 209) Include:

(1) The incident involved multiple victims;

(2) The property or ransom taken or which the prisoner attempted to take had a value of \$25,000 or more;

(3) The kidnapping posed a threat to the public order, such as victim was a public official;

(d) Specific Circumstances in Aggravation of Other Life Crimes. The hearing panel shall consider any specific factors in aggravation, including those established by the judicial council, as they may pertain to setting parole dates for these offenses.

#### **2284. Circumstances in Mitigation of the Base Term.**

(a) General. The panel shall impose the lower base term or another term shorter than the middle base term upon a finding of mitigating circumstances. Circumstances in mitigation of the base term for any life crime include:

(1) The crime involved some factors described in the appropriate matrix in a category lower on either axis than the categories chosen as most closely related to the crime;

(2) The prisoner participated in the crime under partially excusable circumstances which do not amount to a legal defense;

(3) The prisoner had no apparent predisposition to commit the crime but was induced by others to participate in its commission;

(4) The prisoner tried to help the victim or sought aid after the commission of the crime or tried to dissuade the crime partner from committing other offenses;

(5) The prisoner has a minimal or no history of criminal behavior;

(6) The prisoner was a passive participant or played a minor role in the commission of the crime;

(7) The crime was committed during or due to an unusual situation unlikely to reoccur;

(8) The crime was committed during a brief period of extreme mental or emotional trauma.

(9) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(b) Specific Circumstances in Mitigation of Life Crimes. The hearing panel shall consider any specific factors in mitigation, including those established by the Judicial Council, as they may pertain to setting parole dates for these offenses.

NOTE: Authority cited: Sections 3041, 3052 and 5076.2, Penal Code. Reference: Sections 3041 and 4801, Penal Code.

#### **HISTORY:**

1. New subsection (a)(9) and new Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

#### **2285. Additional Term for the Use of a Firearm.**

The panel shall impose a specific enhancement of two years if the prisoner personally used a firearm in the commission of any life crime unless the panel states specific reasons for not adding the enhancement.

#### **2286. Additional Terms for Other Offenses.**

(a) General. The panel shall impose enhancements as provided in this section.

If the panel finds circumstances in aggravation or mitigation as provided in sections 2287 or 2288, the panel may impose a higher or lower enhancement, or may impose no enhancement, if the panel states the specific reasons for doing so.

(b) Multiple Commitments. An enhancement should be added to the base term if the prisoner has been committed to prison for more than one offense, regardless of whether the sentences are to be served concurrently or consecutively with the life sentence or each other.

(1) Nonlife Offenses. Except as provided in (3) below, in adding enhancements for nonlife offenses, the panel should be guided by Penal Code Section 1170.1. The panel shall select a principal term and subordinate terms based on the nonlife offenses and add the total term to the term established for the life offense. The term for the nonlife offense shall be the term in effect at the time the prisoner committed the offense.

(2) Life Sentence Offenses. The enhancement for each life sentence offense in addition to the base term should be seven years.

(3) Nonlife 1168 Offenses. The enhancement for each nonlife 1168 offense should be six months.

(c) Prior Felony Convictions. An enhancement should be added to the base term for prior felony convictions as specified in this subsection, regardless of whether the prior felony conviction or prison term was pled and proven. The panel may add less than the determinate enhancement if the prior felony conviction or prison term was not pled and proven. In adding enhancements under this subsection, the panel should consider the date of the prior conviction and the length of time between release from custody and subsequent convictions if the prisoner has never been placed in custody. The period of confinement shall not be increased for convictions or prior prison terms resulting from convictions that have been reversed in court or pardoned by the executive.

(1) Prior Prison Terms. In adding enhancements for prior prison terms the panel should be guided by the determinate enhancements for prior prison terms.

(2) Prior Felony Convictions with Probation. An enhancement of six months should be added for each prior felony conviction for which the prisoner was granted probation.

(d) Additional Term for Disciplinary Offenses. The panel may impose a specific enhancement for serious disciplinary offenses which occurred since arrival in prison but before a parole date is granted. Only disciplinary offenses which might have resulted in rescission proceedings after a parole date had been granted as specified in section 2451 may be considered for enhancing the total period of confinement. Serious disciplinaries which occur after a parole date has been granted may increase the total period of confinement only after rescission proceedings (see Chapter 4).

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041, Penal Code.

#### **HISTORY:**

1. New subsection (c) filed 8-18-78 as an emergency; designated effective 8-21-78. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).



2. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
3. Amendment of Footnote 2 in subsection (b) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
4. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
5. Amendment of subsections (b) and (c) filed 2-8-80; effective thirtieth day thereafter (Register 80, No. 6).

**2287. Circumstances in Aggravation of the Additional Term for Other Crimes.**

Circumstances which may justify imposition of a term for another crime higher than that suggested in Section 2286 include:

(a) **Pattern of Violence.** A victim was seriously injured or killed in the course of the other crime, or there was a substantial likelihood of serious injury or death resulting from the acts of the prisoner.

(b) **Numerous Crimes.** The other crime was part of a series of crimes which occurred during a single period of time, show a pattern of similar conduct, and resulted in convictions, but have not resulted in enhancement under Section 2286.

(c) **Crimes of Increasing Seriousness.** The other crime, when considered with the principal crime, indicates a significant pattern of increasingly serious criminal conduct.

(d) **Independent Criminal Activity.** The other crime and its objective were independent of the life crime or the other crime was committed at a different time and place, indicating a significant pattern of criminal behavior rather than a single period of aberrant behavior.

(e) **Status.** The prisoner was on probation or parole or was in custody or had escaped from custody when the crime was committed.

(f) **Other.** The other crime involved any of the circumstances in aggravation enumerated in the Sentencing Rules for the Superior Courts.

**2288. Circumstances in Mitigation of the Additional Term for Other Crimes.**

Circumstances which may justify imposition of a term for another crime lower than that suggested in Section 2286, or which may justify imposition of no enhancement, include:

(a) **Minor Punishment for Other Crime.** The period of incarceration imposed for the other crime as a condition of probation or as the sentence for the other crime is equal to or less than the additional term provided by Section 2286.

(b) **Successful Completion of Probation or Parole.** The prisoner's performance on probation or parole for the other crime was good, and the prisoner was free of criminal convictions for a reasonable period of time following probation or parole.

(c) **Insignificant Prior Record.** The other crime is unrelated to the principal offense in time, or in the kind of criminal conduct involved, or in the apparent motivation or cause of the criminal conduct indicating an insignificant pattern of criminal behavior.

(d) **Probation.** The prisoner was granted probation after conviction of the other offense.

(e) **Other.** The other crime involved any of the circumstances in mitigation enumerated in the Sentencing Rules for the Superior Courts.

**2289. Fixing a Parole Date: Computation.**

The terms set for the life crime, specific enhancements, and other crimes shall be added together resulting in a total life term. Any preprison credit shall be deducted (see Sections 2342-2344) from and any time at large shall be added to the total life term. The adjusted life term shall be added to the reception date for the life crime.

The reception date is the date the prisoner was received for the life crime under Penal Code Section 2900 or 1203.2a. If the prisoner was serving a nonlife term at the time of sentencing for the life crime the reception date is the date the prisoner was returned from court with the new life term. If the prisoner was serving a life term at the time of sentencing for another life crime, the reception date is the date the prisoner was received for the original life crime under Penal Code Section 2900 or 1203.2a.

If the time already served by the prisoner exceeds the term set pursuant to this article, the panel's order shall read "Prisoner to be released upon time already served," and the prisoner shall be released in accordance with Article 9 of this chapter.

**2290. Postconviction Credit.**

(a) **General.** Life prisoners may earn postconviction credit for each year spent in state prison. Postconviction credit for time served prior to the hearing at which a parole date is established shall be considered at that parole consideration hearing. Thereafter, postconviction credit for time served since the last hearing shall be considered at progressive hearings. In no case may postconviction credit advance a release date earlier than the minimum eligible parole date. Provided, however, postconviction credits which would advance the parole release date to less than 180 days from the date of the hearing shall not be granted unless or until the parole review authority of the Governor is exercised pursuant to Penal Code section 3041.1.

(b) **Amount of Credit.** Postconviction credit shall be granted to life prisoners in a manner which allows similar amounts of time to prisoners in similar circumstances.

The suggested amount of postconviction credit is 4 months for each year served since the date the life term started. The board may grant more or less than 4 months annual postconviction credit when the prisoner's performance, participation or behavior warrants such adjustment of credit. Less than 4 months credit may be granted if the prisoner fails to meet the general expectations set forth in Section 2290(c). More than 4 months credit may be granted if the prisoner demonstrates exceptional performance in a work assignment, exceptional participation in self-help or rehabilitative programs, or other exemplary conduct. If a panel grants more than 4 months of postconviction credit at an annual hearing, the case shall be reviewed as provided in Sections 2041-2043.

(c) **Criteria.** In determining the amount of postconviction credit to be granted, the panel shall consider the following:

(1) **Performance in Institutional Work Assignments.** All life prisoners are presumed to work and to perform satisfactorily in work assignments (see CDC Rules 3040 and 3041). Lack of a work assignment shall not necessarily prevent the granting of postconviction credit. The panel shall consider the nature and availability of work assignments at the institution, the prisoner's custody status, and any other impediments to the prisoner's receiving a work assignment.

(2) **Participation in Self-help and Rehabilitative Programs.** All life prisoners are presumed to participate in programs for self development (refer to CDC Rules 3040 and 3041). Lack of program participation shall not necessarily prevent the granting of postconviction credit. The panel shall consider the nature and availability of programs at the institution, the prisoner's custody status, and any other impediments to the prisoner's participation in programs.

(3) **Behavior in the Institutional Setting.** All life prisoners are presumed to behave in a disciplinary-free manner, in accordance with state law and departmental regulations (refer to CDC Rules 3000-3021). However, a minor disciplinary offense shall not necessarily prevent the granting of postconviction credit.



(d) **Credit Not Granted.** No annual postconviction credit shall be granted in the case of any prisoner who commits serious or numerous infractions of departmental regulations, violates any state law, or engages in other conduct which could result in rescission of a parole date (see Section 2451), unless the panel finds evidence in mitigation and supports such finding with a statement of its reasoning. Consistent unsatisfactory performance in work assignments, consistent failure to engage in program participation, or consistent overall negative behavior demonstrated by numerous minor disciplinary reports may, individually or cumulatively, justify the withholding of annual postconviction credit which otherwise could have been granted.

(e) **Change in Parole Date.** Once postconviction credit is granted for a particular year of imprisonment, the credit shall be applied to any new term established after rescission or reconviction after a reversal.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 3041, Penal Code. In re Stanley, 54 Cal.App.3d 1030 (1976).

#### HISTORY:

1. Amendment of subsection (a) filed 8-18-78 as an emergency; designated effective 8-21-78. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
2. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
3. Editorial correction in placement of history notes (Register 78, No. 43).
4. Repealer of subsection (a)(1) and amendment of subsection (b)(1) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
5. New subsection (e) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
6. Amendment of subsections (a) and (b) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
7. Amendment of subsection (d) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
8. Amendment of subsection (a) and Note filed 12-20-93; operative 1-19-94 (Register 93, No. 52).
9. Editorial correction of subsection (e) (Register 95, No. 45).

#### **2291. New Crimes.**

New crimes committed by the prisoner shall be dealt with in accordance with Section 2286.

#### **2292. Retroactivity.**

(a) **General.** All life prisoners committed to state prison for crime(s) committed prior to July 1, 1977 shall be heard in accordance with rules in effect prior to 7/1/77. All life prisoners heard after the effective date of these regulations, who have been committed to state prison for crime(s) committed after 7/1/77, shall be heard in accordance with this article.

(b) **No Parole Date Was Set Prior to July 1, 1977.** The hearing panel shall deny parole or set a parole date as provided in Sections 2281-2290.

(c) **Parole Date Was Set Prior to July 1, 1977.** The hearing panel shall deny parole or set a parole date as provided in Sections 2281-2290 as though no parole date had been set previously. If the parole date is earlier than a parole date set before the effective date of these regulations, the date set under these regulations is the controlling parole date. If the parole date is later than the previous date, the previous date is the controlling parole date.

**Postconviction Credit.** In determining the amount of postconviction credit appropriate for a prisoner's conduct during a specified period of time, the panel shall apply the guidelines under which the parole date was originally established. For example, a

prisoner who had a parole date established under guidelines in effect prior to July 1, 1977 shall be considered for postconviction credit under the guidelines in effect prior to July 1, 1977. Any credit granted under those guidelines shall advance the parole date established under those guidelines. If a prisoner also has a parole date established under Section 2282 the panel shall determine the amount of credit applicable under Section 2290, and that credit shall be deducted from the parole date established under Section 2282.

(d) **Parole Violators.** Life prisoners whose paroles were revoked prior to July 1, 1977, shall have parole dates set as provided in subsections (1) and (2) of this section:

(1) **Returned to Finish Term.** The hearing panel shall set a parole date as provided in Sections 2281-2290. The life crime shall be the base crime. The parole violation that resulted in the return to prison shall be considered as an adjustment for postconviction factors and may increase the period of confinement for the life crime by an amount of time the hearing panel determines to be appropriate for the particular violation. If after application of preprison credit and at-large time, the base period of confinement life term expires prior to commission of the offenses resulting in the violation, the prisoner will be paroled effective 60 days after the hearing.

(2) **With New Term.**

(A) **Life Sentence.** If the new term includes a life sentence, the hearing panel should discharge the original life term and deny parole or set a parole date for the new life sentence adding time for any nonlife commitments as multiple commitment offenses pursuant to Sections 2281-2290. The action to discharge the original term shall be to set a parole date on the original life term effective 60 days after the date of the hearing and to waive parole on the original life term.

(B) **Nonlife Sentence.** If the new term includes only nonlife sentences the hearing panel shall first consider whether to discharge the original life sentence. In making this determination the panel shall consider: the date on which the prisoner was originally received on the life crime, the length of time the prisoner served prior to parole on the life crime, the length of the term for the new nonlife commitments, the length of time the prisoner served on parole prior to committing the new crime and the prisoner's parole adjustment. If the prisoner served a lengthy term prior to release on parole or has a new nonlife term that will extend three or more years beyond the period of confinement that could be set for the life crime the panel may discharge the original life term by setting a parole date on the life crime to be sixty days after the hearing and waiving parole on the life crime. The prisoner will then have an 1170.2(a) DSL release date calculated and ISL parole hearings.

If the panel determines that the original life sentence should not be discharged, the panel shall set a parole date and may use the life crime as the base crime and making adjustments for the new crimes. In determining an appropriate adjustment for the new crime the panel shall follow the suggested terms in Section 2286. If, after the application of pre-prison credit, the term on the life crime expires prior to the commission of the new crimes, the decision at the parole hearing will be deemed a discharge on the original life term, effective 60 days after the hearing and the prisoner will have an 1170.2(a) DSL release date calculated and ISL parole hearings on the ISL crimes. If the term on the life crime does not expire prior to the commission of the new crimes, the prisoner remains a life prisoner and the parole date set at the parole hearing shall be the parole date as provided in subsections (b) and (c) above.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code; In re Stanley, 54 Cal. App. 3d 1030 (1976); and In re Stanworth, 33 Cal. App. 3d 176 (1976).



**HISTORY:**

1. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. New subsection (e) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
3. Amendment of subsection (c) and repealer of subsection (e) filed 8-12-82; effective thirtieth day thereafter 82, No. 33).
4. Amendment of subsection (a) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

## Article 6. Parole Consideration Procedures for ISL Prisoners

**2300. General.**

All ISL prisoners shall be considered for parole pursuant to the procedures in this article. ISL prisoners with new criminal or disciplinary charges pending shall be scheduled as provided in Section 2307. ISL prisoners with changes in legal status shall be scheduled as provided in Section 2308.

ISL prisoners shall also have a DSL release date calculated as provided in Chapter 2, Article 3. Actual release on parole shall occur on the ISL parole date as calculated in this article or the DSL release date, whichever occurs first. Until actual release, the prisoner is entitled to the ISL parole consideration hearings described in this article.

**2301. Information Considered.**

At all parole consideration hearings described in this article, the hearing panel shall consider the information described in Sections 2232-2235.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041 and 5076.1, Penal Code.

**HISTORY:**

1. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46)..

**2302. Panel Composition.****HISTORY:**

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2303. Prisoner Rights.**

At all parole consideration hearings described in this article the prisoner shall have the rights specified in Sections 2245-2255. The record of the hearing shall be a tape recording.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 1170.2 (c), Penal Code.

**HISTORY:**

1. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

**2304. Initial Parole Hearing.**

(a) General. At this hearing the prisoner shall be considered for parole for the first time. The hearing panel shall first determine whether the prisoner is unsuitable for parole under the criteria in Section 2316. If the prisoner is found unsuitable, parole shall be denied, and a written statement of the specific factual reasons for the denial shall be given to the prisoner. The hearing panel may recommend to the prisoner what steps may be undertaken to enhance the possibility of a grant of parole at a future hearing.

If a prisoner is found suitable for parole, a tentative parole date shall be set as provided in Sections 2318-2328 utilizing the factors of Section 2317 and the ranges of Section 2329.

(b) Scheduling. The initial parole hearing shall be scheduled as follows:

- (1) MEPD within 120 days.

A prisoner whose MEPD is within 120 days of reception shall be scheduled within 120 days of reception.

- (2) MEPD over 120 Days.

A prisoner whose MEPD is more than 120 days after reception shall be scheduled one month before the MEPD.

**2305. Progress Hearing.**

(a) General. At this hearing the hearing panel shall determine whether a previously set parole date should be advanced due to the prisoner's conduct in prison or any change in circumstances as provided in section 2324(b). The reasons for advancing or not advancing the parole date shall be documented by the hearing panel.

(b) Scheduling. The hearing shall be scheduled by department staff according to the following schedule:

(1) If the parole date is within 9 months of the date of the last parole consideration hearing, no progress hearing shall be scheduled.

(2) If the parole date is between 10 and 14 months of the date of the last parole consideration hearing, this hearing shall be scheduled during the fourth month prior to the parole date.

(3) If the parole date is 15 months or more of the date of the last parole consideration hearing, this hearing shall be scheduled at the twelfth month after the hearing at which the parole date was set and annually thereafter.

(4) Any time department staff feels an earlier parole date would be appropriate, department staff shall place the case on the institutional miscellaneous proceedings calendar with documentation of the reasons for requesting the progress hearing. The board may deny the department request or may order a progress hearing scheduled.

(5) A progress hearing shall not be scheduled for a prisoner with an ISL parole date which is later than a confirmed DSL release date if the maximum advancement that could be granted at the progress hearing (4 months per year) plus a 60-day advancement would not result in advancing the ISL parole date to a date earlier than the DSL release date.

If department staff believes that the prisoner may warrant an advancement of more than 4 months, the case may be placed on the miscellaneous proceedings calendar for review.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Stanley, 54 Cal.App.3d 1030 (1976) and Section 1170.2, Penal Code.

**HISTORY:**

1. Amendment of subsection (a) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. New subsection (b)(5) filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).
3. Amendment of subsection (b) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).

**2306. Subsequent Parole Hearing.**

(a) General. At this hearing each prisoner who was previously denied parole shall be reconsidered for parole in the same manner as at the initial parole hearing. The hearing panel shall consider the information developed since the last hearing applying the criteria of Sections 2316-2317.

(b) Scheduling. This hearing shall be scheduled 12 months after the most recent hearing and annually thereafter.



**HISTORY:**

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

**2307. Hearing for Prisoners with New Criminal or Disciplinary Charges Pending.**

Department staff shall postpone the parole consideration hearing of any prisoner who has new criminal or serious disciplinary charges (see Director's Rule 3315) pending immediately prior to a regularly scheduled hearing. Department staff shall place the case on the miscellaneous proceedings calendar every 90 days from the date of the originally scheduled hearing including a report of the status of the case. Following conclusion of the criminal or disciplinary charges, the case shall be scheduled for the next regular calendar.

NOTE: Authority cited; Section 5076.2, Penal Code. Reference: Section 1170.2, Penal Code.

**HISTORY:**

1. Amendment of subsection (b) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 2-8-80; effective thirtieth day thereafter (Register 80, No. 6).

**2308. Hearings for Prisoners with Changes in Legal Status.**

Changes in legal status include: a final court decision altering the prisoner's commitment status, modification of the judgment or abstract of judgment, and new commitments.

(a) Before Initial Parole Hearing. If a prisoner's legal status changes before the initial parole hearing, the change in legal status shall be considered at the initial parole hearing as regularly scheduled or as would be scheduled considering the change in legal status.

(b) After Initial Parole Hearing. If a prisoner's legal status changes after the initial parole hearing, department staff shall immediately schedule the prisoner for a progress or subsequent parole hearing as appropriate.

(c) New Commitment. If a prisoner with a previously established parole date receives a new commitment to state prison the parole date shall be rescinded. No hearing or other board action is required. The department shall record the rescission of the parole date on the grounds that the prisoner has received a new commitment. The prisoner may appeal the rescission only on the grounds that he is not the person sentenced to state prison by the new judgment.

If the new commitment is for a life sentence, the prisoner shall be scheduled for a documentation hearing during the 36th month after commencement of the life term (§ 2269.1) and a parole consideration hearing during the 13th month prior to the new minimum eligible parole date (§ 2268(c)).

If the new commitment is for an indeterminate sentence, the prisoner shall be scheduled for a parole consideration hearing one month before the minimum eligible parole date for the new commitment offense or within 120 days if the M.E.P.D. is within 120 days of receipt of the new commitment (§ 2304).

If the new commitment is for a determinate term, the parole consideration hearing shall be conducted within 60 days of receipt of the new commitment unless no parole consideration hearing is required under § 2310.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code.

**HISTORY:**

1. New subsection (c) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. Amendment of subsection (c) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
3. Amendment of subsection (c) filed 6-17-2003; operative 7-17-2003 (Register 2003, No. 25).

**2309. Hearings for Prisoners with Confirmed 1170.2 Release Dates.**

Any ISL prisoner who has a confirmed 1170.2(a) release date which will occur less than 60 days after a scheduled ISL parole hearing will be removed from the ISL calendar and released on this 1170.2(a) release date. An 1170.2(a) release date is confirmed when the calculation of the determinate term has been signed by three commissioners or deputy commissioners of the board.

If the prisoner may have a special or particular parole plan which could warrant the advancement of the ISL date to a date earlier than his DSL date the case shall be placed on the miscellaneous proceedings calendar. The board will review the case to determine if a progress hearing is warranted.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2, 5075 and 5076.1, Penal Code.

**HISTORY:**

1. New section filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).

**2310. Hearings for Prisoners Serving ISL and DSL Terms.**

(a) General. Prisoners serving both ISL and DSL terms shall have an ISL parole consideration hearing only if the board could set an ISL parole date that would result in a release earlier than the release date calculated under Penal Code Section 1170.2. If an ISL parole consideration hearing is required, it shall be held as provided in Section 2304. At the ISL parole consideration hearing the panel will set a period of confinement for the ISL sentence only, disregarding any crimes for which the prisoner received a determinate sentence.

(b) Concurrent ISL and DSL Terms. A prisoner serving concurrent ISL and DSL terms shall be scheduled for an ISL parole consideration hearing only if the minimum DSL release date on the ISL term is:

- (1) Later than the DSL release date on the DSL term and
- (2) More than 60 days later than the MEPD on the ISL term.

(c) Consecutive ISL and DSL Terms. A prisoner serving consecutive ISL and DSL terms shall be scheduled for an ISL parole consideration hearing only if the minimum DSL release date on the combined ISL and DSL terms is:

- (1) Later than the DSL release date on the DSL term considered alone (as if it were concurrent) and
- (2) More than 60 days later than the earliest eligible parole date computed by adding the MEPD on the ISL term and the minimum DSL on the DSL term standing alone.

If a prisoner who was not scheduled for a hearing loses good time credit the earliest eligible release date, combined DSL release date and DSL release date on the DSL term shall be recalculated. The prisoner shall be scheduled for a hearing only if the requirements of (1) and (2) above are met. The hearing shall be held within two months of the loss of good time credit.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 1170.2, Penal Code.



## HISTORY:

1. New section filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsection (a) filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).

## Article 7. Parole Consideration Criteria and Guidelines for ISL Prisoners

### 2315. General.

In considering an ISL prisoner for parole, the hearing panel shall consider the criteria and be guided by the ranges suggested in this article in setting a parole date.

Applying the criteria in 2316, the hearing panel shall first determine whether the prisoner is unsuitable for parole. If the prisoner is found unsuitable, parole shall be denied.

If the prisoner is found suitable for parole, the hearing panel shall consider the criteria in 2317 to determine the total period of confinement. The hearing panel shall determine the period of confinement following the procedures in 2318-2328.

### 2316. Unsuitability Criteria.

In determining whether an ISL prisoner is unsuitable for parole the hearing panel shall consider factors which affect the severity of the offense and the risk of danger to society if the prisoner were released. Examples of factors indicating the prisoner is unsuitable for parole include:

- (a) A history of violent attacks.
- (b) A history of forcible sexual attacks on others.
- (c) A persistent pattern of criminal behavior and a failure to demonstrate evidence of a substantial change for the better.
- (d) The presence of a psychiatric or psychological condition related to the prisoner's criminality which creates a high likelihood that new serious crimes will be committed if released.

### 2317. Fixing a Parole Date: Criteria.

(a) General. If the prisoner is found suitable for parole, in setting a parole date the hearing panel shall consider the seriousness of the offense and any relevant criteria described in the sentencing rules the judicial council may issue.

(b) Specific Aggravating Factors. Aggravating circumstances are those which relate solely to the commitment offense and tend to increase the seriousness of the offense. Examples of specific aggravating circumstances by offense include:

- (1) Homicide.
  - (A) Multiple victims.
  - (B) Method of killing vicious in nature where suffering is deliberately inflicted.
- (2) Violence against a Person.
  - (A) Extent of injury, such as injury which caused permanent loss of body organ or limb; created long standing serious medical or psychiatric problems; or required extensive hospitalization.
  - (B) Manner of infliction, such as a vicious assault continuing after victim incapacitated or prolonged torture.
  - (C) Injury to peace officer intended to prevent performance of his duty.
- (3) Sexual Offenses.
  - (A) Physical harm, such as injuries which required hospitalization or extensive medical treatment or injuries which were inflicted beyond accomplishing sexual act.
  - (B) Psychological harm, such as a victim forced to participate in front of family or friends; lack of concern for unusual condition of victim such as age, pregnancy, or physical disability; or the offense was committed in a manner that might increase the likelihood of psychological harm.
- (4) Property Crimes with Threat to Persons.

(A) Extent of force or threat, such as force or threat exceeded what was necessary to accomplish act or force or threats continued after property was acquired.

(B) Systematic in nature, such as the planning indicates the crime was a part of a larger criminal scheme or organization; the crime was part of a large scale effort to disrupt business or safety; or the crime was done for hire.

(5) Crimes Against Property.

(A) Harm to victim, such as a victim left destitute or suffers substantial losses; a victim physically or sexually abused in course of offense.

(B) Systematic in nature, such as when the crime is part of a complex scheme or criminal network or is repeatedly practiced on unsophisticated victims.

(6) Weapons Offenses. Potential harm, such as bringing a weapon into an institution by a person with privileged access; bringing a weapon into an institution as part of a plan for escape or injury; possession or manufacture of bombs or weapons by an organization planning injury or destruction; or possession of a firearm by an ex-felon where the circumstances indicate the great likelihood of further criminal use or actual criminal use.

(7) Drugs. Size and scope of operation, such as an extensive volume of drugs or the manufacture of drugs with professional chemical equipment.

(8) Family Offenses.

(A) Act resulted in prolonged hospitalization, deformity, or disfigurement.

(B) Act was repeated over a prolonged period of time.

(C) Victim was totally defenseless.

(D) Other family members forced to witness abuse.

(9) Escape Offenses. Extent of violence or threat used to effect escape.

(10) Miscellaneous Offenses. Harm and scope of operation such as perjury meant to seriously injure another's life or liberty; the act seriously undermines the integrity of the governmental process or faith therein or otherwise is an abuse of a fiduciary position; a conspiracy as part of a large scale criminal operation.

(c) Specific Mitigating Circumstances. Mitigating factors are those which relate solely to the commitment offense and which tend to lessen the seriousness of the offense, including circumstances in mitigation which do not amount to a full legal defense.

Examples of mitigating circumstances by offense include:

(1) Violence (including homicide).

(A) Provocation by victim such as verbal threats by victim or physical harassment by victim.

(B) Elements of self-defense, for example the victim was armed or had a great physical advantage.

(C) Motivation such as whether the violence was not foreseeable or was due to unique circumstances not likely to recur.

(D) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(2) Property Offenses.

(A) Economic need not likely to recur.

(B) Relatively small actual losses involved.

(C) Any restitution made.

(3) Escape.

(A) Escapee has been threatened or assaulted or is in fear for his life.

(B) Escapee's family has been assaulted or threatened and escapee fears for their safety.

NOTE: Authority cited: Sections 3041, 3052 and 5076.2(a), Penal Code. Reference: Sections 3041 and 4801, Penal Code.



**HISTORY:**

1. Amendment of subsection (b)(4) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. New subsection (c)(1)(D) and new Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

**2318. Fixing a Parole Date: Procedure.****HISTORY:**

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2319. Definitions.**

(a) **Total Period of Confinement.** The total period of confinement is the full length of imprisonment established by the board on all crimes for which a prisoner was committed to prison without application of preprison credit. The total period of confinement may be increased after a rescission hearing or decreased after a progress hearing. The total period of confinement shall be established by adding the base period of confinement and the adjustments.

(b) **Base Crime.** The base crime is the current commitment crime, or if there are multiple commitment crimes, the one designated by the hearing panel as the most serious.

(c) **Base Period of Confinement.** The base period of confinement is that portion of the total period of confinement which reflects the seriousness of the base crime.

(d) **Adjustments.** Adjustments are any periods of time added to or subtracted from the base period of confinement which increase or decrease the total period of confinement for the factors specified in § 2321-2324.

**HISTORY:**

1. Amendment of subsection (d) filed 10-27-77 as an emergency. Certificate of Compliance included (Register 77, No. 44).

**2320. Base Period of Confinement.**

The base period of confinement shall be established solely on the gravity of the base crime as determined by the hearing panel, taking into account all of the circumstances of that crime (§ 2317).

(a) **Base Crime.** The hearing panel shall determine the base crime, which shall be the most serious of the commitment crimes.

(b) **“Typical” or “Aggravated.”** The hearing panel shall consider the factors of § 2317 in determining whether the base crime was typical or aggravated. Characterization of a base crime as typical or aggravated shall be based solely on the seriousness of the base crime. The hearing panel shall list specific, factual reasons for characterizing a crime as typical or aggravated.

(c) **Set Base Period of Confinement.** Once the crime has been characterized as typical or aggravated, the hearing panel may use the range suggested for that crime in § 2329 as a guideline in setting the base period of confinement.

(d) **Reasons.** The specific, factual reasons for establishing the base period of confinement shall be documented by the hearing panel.

**2321. Adjustment: General.**

(a) **Reasons.** The specific, factual reasons for making any adjustment in the total period of confinement for the factors enumerated in § 2322-2324 shall be given in writing by the hearing panel.

**HISTORY:**

1. Repealer of subsection (a) and relettering of subsection (b) to subsection (a) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2322. Adjustments for Preconviction Factors.**

(a) **Criminal History.** The prisoner's criminal history may increase the total period of confinement, but if the criminal history is old (the prisoner was released from federal, state or local custody after conviction of a felony and not returned to federal, state or local custody for a period of five years from the date of release) the criminal history shall not be used to adjust the total period of confinement unless the conduct which resulted in the criminal history forms a pattern with the current commitment crimes. The period of confinement shall not be increased for convictions, or prior prison terms resulting from convictions, that have been reversed in court or pardoned by the executive. When old criminal history is used to extend the total period of confinement, the hearing panel shall document the pattern of conduct.

Criminal history falls into four categories, each of which is mutually exclusive. Types of criminal history which shall be considered are:

(1) **Prior Prison Terms.** Felony convictions which were so serious that they resulted in a prison sentence shall be given the greatest weight. A prior prison term is one for which the prisoner was committed to prison and paroled or discharged or may be a prison term that has not been discharged if a prisoner is convicted of new crimes during his commitment for other crimes. A previous commitment to prison for several crimes shall be treated as a single prison term. Prior prison terms include any conviction in a state or federal court which resulted in the individual's having actually served a prison term in any state or federal prison for an offense which would be a felony in California or previous commitments to the Department of Corrections where the prisoner was released on parole and returned as a parole violator with new term.

Each prison term shall be evaluated for the seriousness of the conduct which resulted in the prison term to determine whether it warrants increasing the total period of confinement.

(2) **Prior Felony Convictions Pled and Proven.** Prior felony convictions which did not result in a prison term, but which were pled and proven as part of the current sentence to prison are usually given lesser weight than prior prison terms.

(3) **Other Convictions.** Other criminal conduct which resulted in conviction, but did not result in a prison term and was not pled and proven as part of the present sentence to prison is usually given least weight.

(4) **Lack of Criminal History.** A complete lack of or very minor criminal history may reduce the total period of confinement.

(b) **Other Preconviction Factors.** Other preconviction factors may also affect the total period of confinement. Examples of other preconviction factors include the prisoner's personal and social history, family and marital history, employment history, intelligence and education, skills already acquired and physical and emotional health.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2, 3041, and 3060, Penal Code.

**HISTORY:**

1. Amendment of subsection (a) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. Amendment of subsection (a) filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).

**2323. Adjustments for Commitment Factors.**

(a) **Multiple Crimes.** The total period of confinement may be increased for multiple crimes. Multiple crimes are crimes in addition



to the base crime which resulted in commitment to prison and occurred prior to arrival in prison. If the prisoner had been in prison prior to the current commitment, multiple crimes are crimes which were committed after the most recent release from prison. Any increase in the total period of confinement shall be commensurate with the severity of the crime.

(b) **Sentencing Status.** The total period of confinement may be increased or decreased because of the prisoner's sentencing status. A consecutive sentence to prison imposed by the court under Penal Code # 669 or required by statute may be interpreted as a recommendation for severity and the total period of confinement may be increased. A sentence for a youthful offender under Penal Code # 1202b may be interpreted as a recommendation for leniency by the committing court and the total period of confinement may be decreased. In making any adjustment for a prisoner's sentencing status, the hearing panel shall give consideration to any statements made by the committing court under Penal Code # 1203.01, 3022 or 3042.

These adjustments to the parole date may occur in addition to the effect the sentence has on the prisoner's minimum or maximum term and minimum eligible parole date.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 1170.2, Penal Code.

#### HISTORY:

1. Amendment of subsection (a) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).

#### **2324. Adjustments for Postconviction Factors.**

(a) **Prison Crimes.** The hearing panel may increase the total period of confinement for crimes which occurred in prison.

(1) **Court Convictions: New Prison Commitment.** The parole date for these offenses shall be established as provided in § 2328.

(2) **Court Conviction: No New Prison Commitment.** The total period of confinement may be increased for court convictions which did not result in a new prison commitment and which occurred since arrival in prison but before a parole date is granted.

Court convictions which occur after a parole date is granted may increase the total period of confinement only after rescission proceedings. See Chapter 4.

(3) **Disciplinary Offenses.** The total period of confinement may be increased for serious disciplinary offenses which occurred since arrival in prison but before a parole date is granted. Only disciplinary offenses which might have resulted in rescission proceedings after a parole date has been granted shall affect the total period of confinement. These offenses are specified in § 2451. Serious disciplinary offenses which occur after a parole date is granted may increase the total period of confinement only after rescission proceedings. See Chapter 4.

(b) **Other Postconviction Factors.** The total period of confinement may be decreased for other postconviction factors. Factors that may reduce the period of confinement include:

(1) Achievement of significant skills which substantially reduce the likelihood that new crimes will be committed.

(2) Significant improvement in self-control, such as may be demonstrated over a period of time by good conduct, good work habits, and good relationships with others.

(3) Outstanding work performance.

(4) Acceptance of new responsibilities indicating an increased ability to lead a crime-free life.

(5) Assistance in maintaining prison order.

(6) Constructive use of leisure time.

(7) Support from the community as demonstrated by visits and assistance from members of the community.

(8) Unusual service to the community.

(9) Positive efforts to develop community resources.

(10) Cell study and other academic achievement.

(11) Voluntary work assignments.

(12) Significant participation and demonstrated progress in psychiatric or self-improvement programs.

(13) Substantial gains in alleviating the personal condition which caused the crime.

(14) Changes in circumstances such as elimination of or substantial change in the personal, economic or social factors involved in the crime or change in the circumstances or environment into which the prisoner is to be released.

(c) **Amount and Criteria.** The criteria for earning credit and the amount of credit to be granted are specified in § 2290(b)-(d).

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 1170.2 and 3041, Penal Code. In re Stanley, 54 Cal.App.3d 1030 (1976).

#### HISTORY:

1. Amendment of subsection (b) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. New subsection (c) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

#### **2325. Weapons.**

The use or possession of weapons may increase the total period of confinement. If the circumstances of the crime indicate the use or possession of weapons in the base offense, this factor shall be considered in fixing the base period of confinement, or in fixing the adjustment for the multiple crime under § 2323(a) if the weapon was used in a crime which results in a multiple crime adjustment.

If the use or possession of weapons has resulted in a separate consecutive sentence, the total period of confinement may also be increased because of consecutive sentence under § 2323(b).

#### **2326. Criminal Charges Not Resulting in a Prison Sentence.**

(a) **No Conviction.** Criminal charges not resulting in conviction (charges which resulted in acquittal or dismissal for any reason) shall not affect the parole date unless the factual circumstances surrounding the charge are reliably documented and are an integral part of the crime for which the prisoner is currently committed to prison.

(b) **Conviction.** Criminal charges resulting in conviction but not commitment to prison (such as convictions upon which sentencing was suspended or stayed) may be considered as part of the individual's criminal history (see § 2322(a)) or as an integral part of the circumstances of an offense for which the prisoner is currently committed to prison.

#### **2327. Fixing a Parole Date: Computation.**

#### HISTORY:

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### **2328. New Commitments.**

Any time a prisoner is committed to prison for a crime committed while in prison or while an escapee, a parole date shall be calculated as follows:

(a) **New Crimes.** A period of confinement shall be determined as provided in § 2318-2326 for the new crime. No adjustment shall be made for the earlier crime except as provided under subsection (c) below.

(b) **Earlier Crimes.** The period of confinement which would have been served for the earlier crimes shall be calculated as provided in § 2318-2326 and documented. The time actually served on the earlier crimes shall be deducted from this period of confinement. The time which has not yet been served shall be referred to as the "remaining portion."



(c) New Period of Confinement. The remaining portion of the earlier crime shall be added to the period of confinement set for the new crime under subsection (a) to arrive at the total period of confinement for the new crime. The period of confinement for the new crime begins upon the expiration of the period of confinement for the earlier crime.

If the remaining portion of the earlier crime is less than the time that would have been added if the earlier crime were a prior prison term, the hearing panel shall make an adjustment equal to the prior prison term adjustment.

### 2329. Suggested Base Ranges.

In determining the base period of confinement, the hearing panel shall assess the individual's culpability for the crime as appropriate under the facts and circumstances of each individual case. The following ranges are suggested for two purposes:

(1) to give the prisoner and the public a general idea of how much time might be served in average cases for a variety of common offenses; and

(2) as general guidelines only which may be utilized by hearing panels as aids in determining an individual's actual base period of confinement. The suggested ranges are general guides only. Less serious crimes of a particular type shall be set below the suggested ranges as appropriate under the facts and circumstances of each case down to the minimum term or minimum eligible parole date. More serious crimes of a particular type shall be set above the suggested ranges up to the maximum, as appropriate under the facts and circumstances of each case.

The total period of confinement may be higher or lower than these ranges after adjustment for other relevant factors.

#### SUGGESTED RANGES

	PAROLE (mos)	
	Typical	Aggravated
<b>(a) Homicide.</b>		
(1) Murder 2nd (187, 20mos, 5-life).....		(36-84)
(2) Att Murder (644/187, 6mo, 6mo-20).....	(38-44)	(45-60)
(3) M/S (vol) (192.1, 6mo, 6mo-15).....	(31-42)	(43-48)
(4) M/S (invol) (192.2, 6mo, 6mo-15).....	(24-36)	(37-42)
(5) Att M/S (664/192.2, 6mo, 6mo-71/2).....	(20-24)	(25-30)
(6) M/S (by auto) (192.3, 6mo, 6mo-5).....	(18-22)	(23-30)
<b>(b) Violence Against a Person.</b>		
<i>More Serious</i>		
(1) Administer Poison (216, 40mo, 10-life).....	(40-46)	(47-72)
(2) Pose as Kidnapper (210, 20mo, 5-life).....	(30-38)	(39-44)
(3) ADW on Police Officer/Fireman by Ex-Felon (245 (b), 20 mo, 5-life).....	(30-38)	(39-44)
(Prior to 9/17/65 6mo, 6mo-15)		
(4) Hostage (4503, 20mo, 5-life).....	(30-38)	(39-44)
(5) Attempt of above (644/___, 6mo, 6mo-20).....	(28-36)	(37-38)
<i>Serious</i> .....	(18-32)	(33-38)
(6) Kidnapping (207, 1yr, 1yr-25)		
(7) Assault w/intent to Commit Rape, etc. (220, 1yr, 1yr-20)		
(8) ADW or Assault w/Force Likely to Produce GBI (245(a), 6mo, 6mo-life) (Prior to 11/23/70 6mo, 6mo-10)		
(9) Assault w/intent to Commit Murder (217, 1yr, 1-14)		
(10) ADW on Police Officer/Fireman 245(b), 6mo, 6mo-life) (9/17/65-11/23/70, 6mo, 6-15) (Prior to 9/17/65, 6mo, 6mo-10)		
(11) Child Stealing (278, 6mo, 6mo-20)		
(12) Assault by Prisoner Serving Less Than Life		

(4501, 1yr, 3-life)		
(13) Attempt of above (664/___, 6mo, 6mo-1/2 max or 6mo-20 if max life).....	(20-28)	(29-36)
<i>Less Serious</i> .....	(18-30)	(31-38)
(14) Mayhem (203, 6mo, 6mo-14)		
(15) Assault to Commit Felony not in Sec. 220 (221, 6mo, 6mo-15)		
(16) Battery on Police Officer/Fireman (243, 1yr, 1yr-10)		
(17) Assault w/Caustic Chemical (244, 1yr, 1yr-14)		
(18) Assault w/Deadly Weapon (245(a), 6mo, 6mo-14) Note: charged as Lesser Included Offense of 217 (245(a).6mo. 6mo-14)		
(19) Attempt of above (664/___, 6mo, 6mo-1/2 max).....	(18-24)	(25-30)

NOTE: References to Penal Code sections in 2329 are to Penal Code sections as they existed prior to July 1, 1977 under the ISL.

<i>Least Serious</i> .....	(18-24)	(25-32)
(20) False Imprisonment (236, 1yr, 1yr-10)		
(21) Assault Against Police Officer/Fireman (240, 6mo, 6mo-2)		
(22) Battery w/Serious Injury (243, 6mo, 6mo- 5)		
(23) Discharge Firearm at Inhab Dwelling (246, 1yr, 1yr-5)		
(24) Battery on Non-Prisoner by Prisoner (4501.5, 1yr, 1yr-3)		
(25) Fail to Render Aid after Accident (20001 VC, 1yr, 1yr-5)		
(26) Drunk Drive Causing Bodily Injury (23101 VC, 1yr, 1yr-5)		
(27) Drive Under Infl. Drugs Causing Bodily Injury (23106 VC, 1yr, 1yr-5)		
(28) Attempt of above (664/___, 6mo, 6mo-1/2 max)	(16-22)	(23-28)
<b>(c) Sexual Offenses.</b>		
<i>More Serious</i>		
(1) Rape w/Great Bodily Injury 264, 5yr, 15-life)		
.....	(60-73)	(74-82)
(2) Aid Rape w/Force (264.1, 20mo, 5-life) (f.286.1, 20mo, 5-life).....	(20-38)	(39-44)
(3) Aid Sodomy w/ Force (286(d), 20mo, 5-life) (f.286.1, 20mo, 5-life)		
(4) Aid Oral Copulation w/Force (288a(d), 20mo, 5-life) (f. 288b, 20mo, 5-life)		
(5) Attempt of above (664, 6mo, 6mo-20).....	(28-36)	(37-42)
<i>Serious</i> .....	(20-48)	(49-60)
(6) Rape w/Force or Threat (261(2)(3), 1yr, 3-life)		
(7) Sodomy under 14 & over 10 yrs older or by Force (286(c), 1yr, 3-life) (f.286, 1yr, 1-life)		
(8) L&L, Child Under 14 (288, 1yr, 1-life)		
(9) Oral Copulation under 14 & over 10 yrs older, or by force, violence, etc., (288a(c), 1yr, 3-life) (f.288a, 1yr, 3-15)		
(10) Attempt of above (664/___, 6mo, 6mo-20)....	(24-32)	(33-38)
<i>Less Serious</i> .....	(12-24)	(25-30)
(11) Sodomy in Jail or Prison 286(e), 6mo, 6mo-5)		
(12) Oral Cop in Jail or Prison 288a(e), 6mo, 6mo-5)		
(13) Seduce for Prostitution 266, 6mo, 6mo-5)		
(14) Abduct for Prostitution (267, 6mo, 6mo-5)		
(15) Place Wife in House of Prostitution (266g, 1yr, 3-10)		



(16) Pimping (266h, 1yr, 1-10)			(B) w/2 SPC (15 yr, 15-life).....	(180-210)	(121-240)
(17) Pandering (266i, 1yr, 1-10)			(2) Induce Minor (by minor) (11354 (f.11502.1) 20 mo, 5-life).....	(30-38)	(39-44)
(18) Incest (285, 1yr, 1-50)			(A) w SPC (40mo, 10-life).....	(40-48)	(49-54)
(19) Sodomy under 18 (286(b), 6mo, 6mo-5) (f.286, 1yr, 1yr-life)			(3) Sell, Transport, etc. (11352,(f.11501) 2 0mo, 5-life).....		
(20) Oral Cop under 18, (288a(b), 6mo, 6mo-5) (f.288a, 6mo, 6mo-15)			(prior to 1/1/76 3yr, 5-life).....	(28-42)	(43-48)
(21) Indecent Exposure w/Like or 288 Prior (314(l), 1yr, 1yr-5)			(A) w/SPC (40mo, 10-life).....	(40-48)	(49-54)
(22) Unlawful Sex Intercourse (261.5, 6mo, 6mo-50) (f.261.1, 6mo, 6mo-50)			(B) w/2 SPC (5yr, 15-life).....	(60-72)	(73-96)
(23) Annoy Child w/Like or 288 Prior (647a, 1yr, 1yr-5)			(4) Possession for Sale (11351, (f.11500.5) 20mo, 5-15.....	(28-38)	(39-42)
(24) Attempt of above (664/___, 6mo, 6mo-1/2 max or 20 if life max).....	(12-18)	(19-24)	(prior to 1/1/76 30mo, 5-15		
<hr/> (d) <i>Property Crimes with Threat to Person.</i>			(A) w/SPC (40mo, 10-life).....	(40-46)	(47-52)
<i>More Serious</i>			(B) w/2 SPC (5yr, 15-life).....	(60-72)	(73-96)
(1) Robbery w/Great Bodily Injury (211, 5yr,15-life).....	(60-73)	(74-82)	(5) Possession (11350,(f.11500) 8mo, 2-10.....	(18-30)	(31-36)
(2) Robbery 1st (211, 20mo, 5-life).....	(22-36)	(37-42)	(prior to 1/1/76 2yr, 2-10)		
(3) Att. Robb 1st (664/211, 6mo,6mo-20).....	(22-36)	(37-42)	(A) w/SPC (20 mo, 5-20).....	(20-36)	(37-44)
<i>Serious</i> .....	(14-30)	(31-42)	(prior to 1/1/76 5yr, 5-20).....	(60-68)	(69-76)
(4) Arson -Burn Public Bldg. etc. (448a, 8mo, 2-20)			(B) w\2 SPC (5yr, 15-life).....	(60-72)	(73-96)
(5) Arson -Burn as Described by Statute (449b, 1yr, 1yr-10)			(6) Sell in Lieu of (11355(f. 11503) 6mo, 6-10).....	(12-18)	(19-24)
(6) Arson -Burn Dwelling, House, Etc. (447a, 8mo, 2-20)			<hr/> (g) <i>Dangerous Drugs. [FNa1]</i>		
(7) Robbery 2nd (211, 1yr, 1-life)			(1) Induce Viol. by Minor (11380, (f.11913) 5yr, 10-life).....	(60-72)	(73-84)
(8) Att Robb 2nd (664/211, 6mo, 6mo-20).....	(12-18)	(19-30)	(9/65-11/69, 6mo, 6mo-5).....	(12-18)	(19-24)
<i>Less Serious</i> .....	(9-18)	(19-30)	(A) w/SPC (10yr, 10-life).....	(120-138)	(139-156)
	(or MEPD)		(9/65-11/69, 8mo,2-10).....	(14-20)	(21-26)
(9) Arson -Burn Personal Property (449a, 1yr, 1-3)			(B) w/2 SPC (15yr, 15-life).....	(180-210)	(211-240)
(10) Arson -Burn Insured Property (450a, 1yr, 103)			(2) Sell, Mfg.Transport (11379, (f.11912(, 3yr, 5-life).....	(36-40)	(41-44)
(11) Attempt to Commit Arson (451a, 6mo, 6mo-5)			(9/65-11/69, 6mo-5).....	(12-18)	(19-24)
<hr/> (e) <i>Weapons Offenses.</i>			(A) w/SPC (20mo, 5-life).....	(38-42)	(43-46)
<i>More Serious</i> .....			(9/65-11/69, 8mo, 2-10).....	(14-20)	(21-26)
(1) Bring Explosives or Firearms into Prisons or Jail (or possession of)(4574, 1yr, 1-life)	(24-32)	(33-42)	(B) w/2 SPC (10yr, 10-life).....	(120-138)	(139-156)
(2) Possession of Weapon by Prisoner (4502, 1yr, 3-life)			(3) Possession for Sale(11378 (f.11911) 2yr, 2-10)	(28-32)	(33-38)
<i>Serious</i> .....	(12-24)	(25-36)	(9/65-11/69, 6mo,6mo-3).....	(9-15)	(16-24)
(3) Possession of Firearm by Ex-Felon (Narcotic Addict) (12021, 6mo, 6mo-15)			(A) w/SPC (3yr, 5-15).....	(36-42)	(43-48)
(4) Possession of Firearm by Ex-Felon Who used Firearm in Prior Felony (12560, 6mo, 6mo-15)			(9/65-11/69, 8mo, 2-10).....	(14-20)	(21-26)
<i>Less Serious</i> .....	(9-18)	(19-30)	(B) w 2 SPC (6yr, 10-life).....	(72-84)	(85-96)
	(or MEPD)		(4) Possession (11377, (f. 11910) 1yr, 1-10.....	(18-24)	(25-32)
(5) Possession-Manufacture of Fire Bomb 452, 6mo, 6 mo-5)			(A) w/ SPC (2yr, 2-20).....	(30-36)	(37-42)
(6) Manufacture, Sale, Poss Blackjack, Sawed-Off Shotgun, etc. (12020, 1yr, 1-3) (Prior to 1/1/76, 1yr, 1-5)			(7/17/65-11/3/68, 1yr, 1-5).....	(12-20)	(21-28)
(7) Alter Marks on Firearm(12090, 1yr, 1-5)			(5) Sell in Lieu of (11382, (f.11917) 6mo, 6mo-5	(9-15)	(16-24)
(8) Unlawful Poss of Firearm Silencer(12520, 6mo, 6mo-3)			<hr/> (h) <i>Marijuana. [FNa1]</i>		
<hr/> <i>Additional Penalties</i>			(1) Sale to Minor (11361, (f.11532) 5yr, 10-life)	(60-72)	(73-84)
(9) Commit Felony Armed w/Deadly Weapon (12022, +20mo, 5-10 CS).....	(12-24)		(A) w/SPC (10yr, 10-life).....	(120-138)	(139-156)
(10) Use of Firearm in Robbery, ADW, etc. (12022.5, +20mo, 5-life CS).....	(12-24)		(B) w/2 (SPC 15yr, 15-life).....	(180-210)	(211-240)
<hr/> (f) <i>Opiates. [FNa1]</i>			(2) Sell,Transport,Furnish (11360,(f.11531) 3yr , 5-life).....	(36-40)	(41-44)
(1) Induce Minor(by adult)(11353, (f.11502) 5 yr, 10-life).....	(60-72)	(73-84)	(A) w/SPC (5yr, 5-life).....	(60-72)	(73-84)
(A) w/SPC (10 yr, 10-life).....	(120-138)	(139-156)	(B) w/2 SPC (40mp, 10-life).....	(72-84)	(85-96)
			(3) Possession for Sale (11359, (f. 11530.5) 2yr, 2-10).....	(28-32)	(33-38)
			(A) w/ SPC (3yr, 5-15).....	(36-42)	(43-48)
			(B) w/2 SPC (6yr,10-life).....	(72-84)	(85-96)
			(4) Plant, Process Peyote (11363, (f. 11540) 6mo, 6mo-10).....	(12-18)	(19-24)
			(A) w/SPC 8mo, 2-10.....	(14-20)	(21-26)
			(5) Plant, Process Mari. (11358, (f.11530.9)1yr, 1-10).....	(18-22)	(23-30)
			(A) w/SPC (2yr, 2-20).....	(30-36)	(37-42)
			(B) w/ 2 SPC (5yr, 5-life).....	(60-72)	(73-84)
			(6) Possession (11357(a) 1yr, 1yr-10).....	(18-22)	(23-32)
			(prior to 1968 incld. plant, cultivate, etc)		
			(eff. 1/1/76, 11357(a) poss. hash,1yr, 1yr-5)..	(12-18)	(19-24)
			(A) w/SPC 2yr, (2-20).....	(24-30)	(31-38)
			(B) w/2 SPC (20mo, 5yr-life).....	(28-34)	(35-42)
			(i) <i>Misc. Controlled Substance Viol.</i>	(9-15)	(16-22)
					(or MEPD)
			(1) Forgery/Alter Prescription (11368, f.11715, 6mo, 6mo-6)		
			(Subsequent 6mo, 6mo-10)		
			(2) Unlawful Write-Fill Controlled		



Substance Prescription (11152, f.11162, 6mo,6mo-6)			(24) False Evid. Register. w/intent to Defraud (4463 VC, 6mo, 6mo-14)		
(3) Unlawful Fill C.S. Prescription (11153, f.11162.5, 6mo, 6mo-6)			(25) Non-Sufficient Funds Check (476a, 6mo,6mo-14)		
(4) Prescribe C.S. Unlawfully (11154, f.11163, 6 mo, 6mo-6)			(26) Counterfeit Dies and Plates (480, 1yr, 1yr-14)		
(5) Physician Prescribe C.S. While Priv. Suspended (11155, f.11163.5, 6mo,6mo-6)			(27) Forgery of Credit Card (484f, 1yr, 1yr-14)		
(6) Prescribe-Administer C.S. to Addict (11156, f.11164, 6mo, 6mo-6)			(28) Manufacture Fraudulent Credit Card (484i, 1yr, 1yr-14)		
(7) Obtain C.S. by fraud (11173, f.11170, 6mo, 6mo-6)			(29) Forgery of Fictitious Name (29221 (EC), 1yr, 1yr-14)		
(8) Give False Name or Address (11174, 6mo, 6mo-6)			(30) Attempt of above (664/___, 6mo,6mo-1/2 max)	(9-15)	(16-22)
(9) Induce Minor to Viol Prescription Law (11371, f.11715.7, 6mo, 6mo-6)			<i>Less Serious</i> .....	(9-15)	(16-22)
(10) Maintaining Place (11366, f.11557, mo, 6mo-10), w/SPC 8mo, 2-20)					(or MEPD)
(11) Forge Prescription (4390 BP Code, 1yr, 1yr-14)			(31) Fraudulent Claims (72, 6mo, 6mo-5)		
(12) Bring Narc, Para, Alcohol into Jail or prison (4573 PC, 6mo, 6mo-5)			(32) Bookmaking (337a, 6mo, 6mo-2)		
(13) Bring Forbidden Drugs or Para. into Jail or Prison (4573.5 PC,6mo,6mo-5)			(33) Forg. Telephone Message (474, 6mo, 6mo-5)		
(14) Poss. Narc, Drugs, Alcohol in Jail or Prison (4573.6 PC, 6mo, 6mo-5)			(34) Fraudulent Possession of Completed Check (475a, 1yr, 1yr-5) (prior to 1/1/74, 1yr, 1yr-14) (1/1/74-1/1/75, 1yr, 1yr-10)		
(15) Attempt of above (664/___, 6mo, 6mo-1/2 max).....	(6-12)	(13-18)	(35) Theft of Credit Cards (484, 6mo, 6mo-5)		
<i>(j) Crimes Against Property.</i>			(36) Injure Tele-Comm Line (591, 6mo, 6mo-5)		
<i>More Serious</i>			(37) Petit Theft w/Prior Theft (666(3), 6mo, 6mo-5)		
(1) Burglary w/Bodily Harm (459,5yr,15-life)..	(60-72)	(73-96)	(38) [FNaaa1] Petit Theft w/PFC (667, 6mo, 6mo-5)		
(2) Burglary w/Explosives (464,40mo,10- 40).....	(40-60)	(61-84)	(39) Theft of Vehicle (10851 (VC), 1yr, 1yr-5)		
(3) Burglary 1st (459, 20mos, 5-life).....	(24-30)	(31-36)	(40) Attempt of above (664/___, 6mo,6mo-1/2 max).....	(9-12)	(13-15)
(4) Attempt of above (664/___,6mo,6mo-1/2 max or 6mo-20 if max life).....	(18-24)	(25-36)	<i>(k) Family Offenses.</i>		
<i>Serious</i> .....	(16-22)	(23-28)	<i>Serious</i> .....	(18-22)	(23-38)
(5) Embezzlement by Public Official 424,1yr, 1yr-10)			(1) Willful Cruelty to Child (life or Health Endangered) (273a, 1yr, 1yr-10)		
(6) Use of Credit Card to Defraud (484g,6mo,6mo- 10)			(2) Inflict Traumatic Injury on Wife (Child) (273d, 6mo, 6mo-10)		
(7) Merchant Issuing Merchandise on Fraudulent Credit Card (484h,6mo,6mo-10)			(3) Attempt of above (664/___, 6mo, 6mo-1/2 max).....	(12-18)	(19-24)
(8) Grand Theft (includes Auto and Person) (487,6mo,6mo-10)			<i>Less Serious</i> .....	(9-15)	(16-20)
(9) Grand Theft Dog (487e, 6mo,6mo-10)					(or MEPD)
(10)Receiving Stolen Property (496, 6mo, 6mo-10)			(4) Abortion (274, 8mo, 2-5)		
(11) Embezzlement (503,1yr,1yr-10)			(5) Abortion, Submit (275, 1yr, 1yr-5)		
(12) Extortion (518,1yr,1yr-10)			(6) Bigamy (281, 6mo, 6mo-10)		
(13) Defraud Insurer (548,1yr,1yr-10)			(7) Child Desertion (271, 6mo, 6mo-1)		
(14) Falsify Records w/Intent to Defraud (3020(b)(CC),6mo,6mo-10) [FNaa1]			(8) Failure to Provide (270, 6mo-1yr + 1 day)		
(15) Sale of Securities without Permit (25110 (CC), 6mo,6mo-10)			<i>(l) Escape Offenses.</i>		
(16) Sale of Securities by Fraud. Scheme (25216(a)(CC),6mo,6mo-10)			<i>More Serious</i> .....	(12-18)	(19-22)
(17) Sale of Securities by Misrepresentation (25401 (CC),6mo,6mo-10)			(1) Escape from Prison Camp w/Force (4530(a), 2yr (per 3044), 1-Life CS)		
(18) Violation Corporation Laws (26104 (CC) 6mo,6mo-10)			(2) Aiding to Escape (4535, 1yr, 1-life)		
(19) Burglary 2nd (459,1yr,1yr-15)			(3) Attempt of above (664/___,6mo,6mo-20)	(6-12)	(13-18)
(20) Forgery (including attempts) (470,1yr,1yr-14)			<i>Serious</i> .....	(9-12)	(13-18)
(21) Forgery, Documents, Seals (472, 1yr, 1yr-14)			(4) Escape from Reform. (Conv. Felon) (107, 6mo, 6mo-10)		
(22) Fraud. Possession of Unfinished Check (475, 1yr, 1yr-14)			(5) Escape from County Facility With Force (Misd Conv) (4532(a), 6mo, 6mo-10)		
(23) Fictitious Check (including attempts) (476, 6mo, 6mo-14)			(6) Escape from County Facility w/Force (Fel. Conv) (4532(b), 6mo, 6mo-10)		
			(7) Assist Escape (4534, 6mo, 6mo-10)		
			(8) Assist Escape by Employee (4533, 6mo, 6mo-10)		
			(9) Attempt of above (664/___, 6mo, 6mo-5).....	(6-12)	(13-18)
			<i>Less Serious</i> .....	(6-12)	(13-18)
			(10) Escape from Deuel Voc. Inst. (2042, 6mo, 6mo-5)		
			(11) Escape (or Attempt) from Civil Addict Program 3002 (WI) -, 6mo-7)		
			(12) Escape from Prison Camp w/out Force (4530(b), 6mo, 6mo-5) (prior to 9/20/63 f.4531, 2yr, 1yr-life CS)		
			(13) Escape from County Facility w/out Force (Fel Conv)		



## Article 8. Preprison Credit

(4532(b), 6mo, 6mo-5)		
(14) Escape While TCR, Work Furlough (4530(c), 6mo, 6mo-5yr)		
(15) Attempt of above (664/___, 6mo, 6mo-1/2 max).....	(6-12)	(13-15)
(16) Escape from County Facility w/out Force (Misd Conv) (4532(a) 6 mo-1 day).....	(5-8)	(8-12+day)
(m) Miscellaneous Offenses.		
(1) Habitual Criminal [FNaaaa1]		
(A) 644(a) 9yrs, life.....	(108-120)	(121-144)
(B) 644(b) 12yrs, life.....	(144-156)	(157-210 )
<i>More</i> .....	(12-18)	(19-24)
<i>Serious</i> .....		
(2) Bribery by Public Official or Employee (68, 1yr, 1yr-14)		
(3) Bribery of a Judicial Officer or Juror (92, 1yr, 1-10)		
(4) Perjury (118, 1yr, 1-14)		
(5) Conspiracy to Defraud (182.4, 6mo, 6mo-10)		
(6) Practice w/out Certificate (2141.5 (BP Code) 6mo, 6mo-10)		
(7) Attempt of above (644/___, 6mo, 6mo-1/2 max)	(9-15)	(16-22)
<i>Serious</i> .....	(9-18)	(19-24)
(8) Injure Prison or Jail (606, 6mo, 6mo-5)		
(9) Felony, Where Penalty not Prescribed (18, 6mo, 6mo-5)		
(10) Accessory to a Felony (32, 6mo, 6mo-5)		
(11) Bribery of a Witness (138, 6mo, 6mo-5)		
(12) Solicitation (653(f), 6mo, 6mo-5)		
(13) Attempt to Extort Money or Property (524, 6mo, 6mo-5)		
<i>Less Serious</i> .....	(6-12)	(13-18)
(14) Compounding a Crime where imprisonment Life or Death (153, 6mo, 6mo-5) where imprisonment - Less (153, 6mo, 6mo-3)		
(15) Criminal Conspiracy (All other conspiracies treated the same as the crime itself) (182, 6mo, 6mo-3)		
(16) Ex-Felon on Prison or Jail Grounds (4571, 6mo, 6mo-5)		
(n) Prior Prison Terms.		
(1) Less Serious.....	(0-12)	
(2) More Serious.....	(12-24)	
(o) Current Prison Commitments.		
(1) Less Serious.....	(0-12)	
(2) More Serious.....	(12-24)	

[FNaa1] SPC = Specified prior conviction. Any specified prior conviction which results in the use of a higher suggested range should not be used to adjust for criminal history under section 2322

[FNaa1] (CC) Corporations Code

[FNaaa1] (Inmates convicted under this section will be treated as first termers.

[FNaaaa1] Any prior conviction which resulted in the adjudication as an habitual criminal should not be considered as part of the criminal history under section 2322.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code.

## HISTORY

1. New subsections (n) and (o) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsection (l ) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
3. Editorial correction of subsections (i)-(j) (Register 95, No. 42).

**2340. General.**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1203.03, 2900, 2900.1, 2900.5, 4019, Penal Code; and People v. Sage, 26 Cal.3d 498 (1980), modified 27 Cal.3d 144a.

## HISTORY:

1. Repealer of Article 8 (Sections 2340-2346) and new Article 8 (Sections 2340-2345) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22). For prior history, see Registers 79, No. 52; 78, No. 14; and 77, No. 44.
2. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

**2341. Types of Preprison Credit.**

(a) Custody Credit. As used in this article, "custody credit" refers to credit granted pursuant to:

- (1) Penal Code Section 2900.5;
- (2) Penal Code Section 4019;
- (3) Penal Code Section 1203.03 for time actually served in custody;

(4) Penal Code Section 2900.1.

(b) Sage Credit. As used in this article, "Sage credit" refers to credit granted pursuant to People v. Sage (1980), 26 Cal.3d 498, as modified 27 Cal.3d 144a. Sage held that equal protection requires good time credit for time served in county jail prior to sentencing to state prison, for time spent in county jail from and after July 1, 1977 only.

(c) Outpatient Credit. As used in this article, "outpatient credit" refers to credit granted pursuant to former Penal Code Section 1203.03(g) for time served as an outpatient from the California Rehabilitation Center.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1203.03 (repealed eff. 1-1-77), 2900, 2900.1, 2900.5, 4019, Penal Code; and People v. Sage (1980) 26 Cal.3d 144a.

**2342. Application of Preprison Custody Credit to ISL, Nonlife 1168 and Life Prisoner Parole Dates.**

(a) Single Offense. All preprison custody credit attributable to the base offense shall be deducted from the base period of confinement computed under Sections 2282, 2320 or 2403.

(b) Multiple Offenses. Preprison custody credit shall be deducted from the base period of confinement and the multiple crime adjustment. Preprison custody credit shall not be deducted from any other adjustment.

(1) No Overlapping Preprison Credit. Preprison custody credit attributable only to the base offense shall be deducted from the base period of confinement computed under Sections 2282, 2320, or 2403. Preprison custody credit attributable only to multiple crimes shall be deducted from the multiple crime adjustment computed under Sections 2286(a), 2323(a), or 2407. Preprison custody credit in excess of the base period of confinement or the multiple crime adjustment shall be deducted from the parole period.

(2) Preprison Credit Overlaps Base and Multiple Crimes. Preprison custody credit attributable both to the base offense and to multiple crimes shall be deducted from the base period of confinement computed under Sections 2282, 2320, or 2403. Any preprison custody credit in excess of the base period of confinement shall be deducted from the multiple crime adjustment computed under Sections 2286(a), 2323(a), 2407 for each multiple crime to which the preprison credit is attributable. Preprison custody credit in excess of the base period of confinement or the multiple crime adjustment shall be deducted from the parole period.



(3) Preprison Credit Overlaps Among Multiple Crimes Only. Preprison custody credit attributable to multiple crimes shall be deducted from the adjustments computed under Sections 2286, 2323(a), 2407 beginning with the adjustment for the earliest crime and deducting any remaining preprison credit from the adjustments following the chronological order of the crimes.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1203.03, 2900.1, 2900.5, 4019, Penal Code. In re Sosa, 102 Cal.App.3d 1002 (1980).

#### **2343. Application of Preprison Credit to ISL Sentence.**

Preprison custody and outpatient credit shall be deducted from the minimum term, MEPD, and primary term fixed under any previous regulation.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 2900.5 and former Section 1203.03(g) (repealed eff. 1-1-77), Penal Code.

#### **2344. Application of Preprison Credit to DSL Release Date Calculated Under Penal Code Section 1170.2.**

(a) Single DSL Sentence. All preprison custody and Sage credit shall be deducted from the DSL release date including enhancements for arming, use, or great bodily injury.

(b) Concurrent DSL Sentences. All preprison custody and Sage credit which is attributable to the offense which results in the controlling DSL release date shall be deducted from the DSL release date for that offense. In determining the controlling DSL release date all preprison custody and Sage credit attributable to each offense shall be deducted from the term for that offense.

(c) Consecutive DSL Sentences.

(1) No Overlapping Preprison Credit. All preprison custody and Sage credit attributable to the DSL principal term crime shall be deducted from that term. All preprison custody and Sage credit attributable to any consecutive crime shall be deducted from the DSL subordinate term computed under Section 2150(c).

(2) Preprison Credit Overlaps DSL Principal Term and DSL Subordinate Term. Preprison custody and Sage credit attributable both to the principal term crime and to any subordinate term crime shall be deducted from the principal term. Any preprison custody and Sage credit in excess of the principal term shall be deducted from each subordinate term to which the preprison custody and Sage credit is attributable. Preprison custody credit in excess of the principal term and the subordinate term shall be credited deducted from the parole period.

(3) Preprison Credit Overlaps Among Subordinate Terms Only. Preprison custody and Sage credit attributable to subordinate terms shall be deducted from the subordinate terms to which it is attributable.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1203.03, 2900.1, 2900.5, and 4019, Penal Code. In re Ballard (1981) 115 Cal.App.3d 647; In re Sosa (1980) 102 Cal.App.3d 1002; and People v. Sage (1980) 26 Cal.3d 498, as modified 27 Cal.3d 144a.

#### **HISTORY:**

1. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### **2345. Excess Credit.**

If any custody credit remains after deducting it from the offense to which it applies, the remaining credit shall be deducted from the parole period.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Sosa (1980) 102 Cal.App.3d 1002; In re Ballard (1981) 115 Cal.App.3d 647.

## **Article 9. Release**

#### **2355. General.**

Release on parole is the actual transfer of a prisoner confined in prison to parole supervision in the community. Actual release on parole for a life, nonlife 1168 or ISL prisoner shall occur when all the provisions of these rules and any applicable department regulations have been met. No prisoner who has been scheduled for rescission proceedings shall be released until the termination of the rescission proceedings.

#### **2356. Notification of Notice and Conditions of Parole.**

Prior to release on parole, the prisoner shall be given the notice and conditions of parole by department staff. The notice and conditions shall be provided in Spanish upon request of the prisoner.

#### **HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

#### **2357. Release to Holds of Other Jurisdictions.**

#### **HISTORY:**

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### **2358. Release Upon Approved Parole Plan (RUAPP).**

#### **HISTORY:**

1. Repealer filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### **2359. Parole Date Advancement.**

A life or nonlife 1168 prisoner or an ISL prisoner who is to be released on his ISL parole date may be released at any time up to 60 days before the parole date if all of the following conditions are met:

(a) The actual parole date is not earlier than the prisoner's minimum eligible parole date.

(b) There are no unresolved legal or administrative prohibitions to release such as pending rescission proceedings.

(c) Any conditions upon which the parole date has been specifically conditioned have been fully met.

(d) Department staff has in writing authorized the earlier release based on such factors as employment opportunities, special programs, family emergency or hardship, or release to a hold or for deportation.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3042 and 5076.1, Penal Code.

#### **HISTORY:**

1. Repealer of subsection (e) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

## **Article 10. Multijurisdiction Regulations**

#### **2365. Hearing Rights: General.**

At all hearings the multijurisdiction prisoner shall have the rights enumerated in this article. Additional rights applicable to specific hearings are covered in the sections dealing with those hearings. The prisoner is responsible for bringing to the attention of the hearing panel any issues pertaining to his rights and any failure to comply with these rules. A multijurisdiction prisoner may waive any of these rights and any such waiver shall be documented in the record.



## HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

**2366. Multijurisdiction Prisoners Located in California: Rights.**

Multijurisdiction prisoners located in California shall have the rights enumerated in Sections 2245-2255.

**2367. Multijurisdiction Prisoners Located Outside California: Rights.**

Multijurisdiction prisoners located outside California shall have the following rights:

(a) Notice. A prisoner shall be notified of the week during which the hearing shall be held, as soon as possible, but no later than one month before the week during which the hearing will be held, unless different provisions are made in the section dealing with a specific hearing. As soon as possible but no later than two weeks in advance of the hearing, a prisoner or parolee shall be notified of the specific date of the hearing. Department staff shall provide notification of the hearing.

(b) Attorney. A prisoner shall be entitled to the assistance of a California attorney at telephone hearings (see subsection (d) below) in all cases where the prisoner would be entitled to the assistance of an attorney if the hearing were to be held in California and the prisoner could personally appear before the board.

(c) Disclosure. A prisoner is entitled to review nonconfidential documents in the department central file. The department is responsible for establishing the procedures for such review. A prisoner is responsible for complying with the department procedures for review of the documents. A prisoner shall have the opportunity to enter a written response to any material in the file.

A prisoner who is dissatisfied with the disclosure may appeal pursuant to department procedures. (See Title 15, California Administrative Code, Section 3003).

**(d) Hearing.**

(1) General. The prisoner has a right to either a telephone hearing conducted by the board at the central office calendar through the use of such telephone equipment as will permit him to participate in the entire proceeding or a hearing conducted in the other jurisdiction by officials of that jurisdiction.

(2) Determination. The prisoner shall receive a telephone hearing unless the hearing is being conducted to determine whether the individual has violated a condition of parole or engaged in conduct which may result in the rescission or postponement of a parole date; the issue has not been settled against the prisoner in a criminal prosecution; and:

(A) The prisoner has made a timely request for the presence of friendly witnesses in order to demonstrate essential facts;

(B) The factual issues involved are complex;

(C) The prisoner will have difficulty in developing or presenting the issues, or

(D) The prisoner is unable to effectively communicate due to language difficulties or physical or mental defect.

(3) WICC and ICC Prisoner Hearing Consent. A WICC or ICC prisoner's hearing shall not be held for the board by officials of the other jurisdiction unless the board at the central office calendar has requested and received the written consent of the prisoner, unless consent was previously given. Consent to any single hearing shall be deemed consent to any subsequent hearing considering the same conduct or any decision based on that conduct.

(4) Hearing Dates for WICC and ICC Prisoners. Any hearing or rehearing to which a WICC or ICC prisoner is entitled under the rules in each chapter in this division may be held no later than 120 days after the time specified in the applicable rule.

(e) Interview. At any hearing the prisoner has the right to speak on his own behalf and to ask and answer questions. A prisoner refusing to participate in a hearing shall be advised that a decision may be made without his participation. No panel shall consider information not available to the prisoner or his attorney unless the information is designated confidential (see Section 2235).

(f) Presentation of Documents. A prisoner shall have the rights specified in Section 2249. The department is responsible for establishing procedures for the presentation of documents by prisoners located outside California. The prisoner is responsible for complying with the department procedures and for submitting any documents within a sufficient time prior to the hearing date so that they may be considered by the panel.

(g) Impartial Panel. The prisoner shall have the rights specified in Section 2250.

(h) Assistance. The prisoner shall have the rights specified in Section 2251. The department is responsible for establishing procedures for providing a prisoner located outside California with appropriate assistance during the hearing.

(i) Department Representative. The prisoner shall have the rights specified in Section 2252.

(j) Continuance. The prisoner shall have the rights specified in Section 2253.(k) Record of Hearing. The prisoner shall have the rights specified in Section 2254.

(l) Written Statement of Decision. The prisoner shall have the rights specified in Section 2255.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1389.7, 3041.5, 11190 and 11193, Penal Code.

## HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (b) filed 7-14-78 as an emergency; effective upon filing (Register 78, No. 28).
3. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).

**2368. Prehearing Procedures.**

Upon notification that the board at the central office calendar has ordered a hearing for a multijurisdiction prisoner or parolee, the central office hearing coordinator shall assure that the officials of the other jurisdiction have done the following:

(a) Scheduled the hearing.

(b) Met time limits.

(c) Advised the prisoner or parolee of his rights.

(d) Screened the prisoner's or parolee's requests for witnesses, if applicable.

(e) Notified any necessary witnesses of the date, time and place of the hearing, if applicable.

(f) Disclosed all documentary and physical evidence unless designated confidential under Section 2235.

(g) Decided requests for continuances under Section 2253.

(h) Arranged necessary attorney representation, if applicable.

(i) Otherwise prepared the case for a hearing.

**2369. Documentation Hearing.**

At this hearing, the panel shall review the prisoner's activities and conduct considering the criteria in §§ 2290 and 2410 and document activities and conduct pertinent to granting and withholding postconviction credit. This hearing shall be conducted by a one person panel and the panel member shall be a commissioner or deputy commissioner. The hearing shall be scheduled pursuant to § 2269.1. For multijurisdiction prisoners located outside California, the hearing may be conducted over the telephone or by videoconferencing.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 1389.7, 3041, 3041.5, 11190 and 11193, Penal Code.

#### HISTORY:

1. Amendment of section heading, repealer and new section and new Note filed 6-17-2003; operative 7-17-2003 (Register 2003, No. 25).

#### **2370. Initial Parole Hearing: Prisoner Rights.**

(a) Multijurisdiction Prisoners Located in California. At the hearing specified in Section 2268 all multijurisdiction prisoners located in California, shall have the rights specified in Sections 2245-2255.

(b) Multijurisdiction Prisoners Located Outside California. At the hearing specified in Section 2268, all multijurisdiction prisoners located outside California shall have the rights specified in Section 2367. The hearing shall be a telephone hearing.

(c) Record. The record of the hearing shall be a verbatim transcript.

(d) Decision. In making a decision concerning parole for multijurisdiction prisoners the hearing panel shall make one of the following decisions considering the factors enumerated:

(1) To discharge the California sentence at the minimum eligible parole date and waive parole when the crime for which the prisoner has been committed to the other jurisdiction is more serious than the California crime or when the prisoner has stronger family, social or economic ties to the other jurisdiction than he does to California.

(2) To set the California term as provided in this Chapter if the prisoner would serve substantially more time for the California crimes than for the crimes committed in the other jurisdiction, the prisoner has stronger social, family or economic ties to California or the panel determines that discharge would be inappropriate.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 1170.2, 3041, 3041.5 and 3041.7, Penal Code.

#### HISTORY:

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. New subsection (d) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
3. Amendment of subsection (d)(2) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

#### **2371. Progress Hearing: Prisoner Rights.**

(a) Multijurisdiction Prisoners Located in California. At the hearing specified in Section 2269, all multijurisdiction prisoners located in California shall have the rights specified in Sections 2245-2255.

(b) Multijurisdiction Prisoners Located Outside California. At the hearing specified in Section 2269, all multijurisdiction prisoners located outside California shall have the rights specified in Section 2367. The hearing shall be a telephone hearing.

(c) Record. The record of the hearing shall be a verbatim transcript.

#### HISTORY:

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

#### **2372. Subsequent Parole Hearing: Prisoner Rights.**

(a) Multijurisdiction Prisoners Located in California.

At the hearing specified in Section 2270 all multijurisdiction prisoners located in California, shall have the rights specified in Sections 2245-2255.

(b) Multijurisdiction Prisoners Located Outside California.

At the hearing specified in Section 2270, all multijurisdiction prisoners located outside California shall have the rights specified in Section 2367. The hearing shall be a telephone hearing.

(c) Record.

The record of the hearing shall be a verbatim transcript.

#### HISTORY:

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

#### **2373. Nonlife 1168 and ISL Prisoners: Parole Consideration Hearing Rights.**

(a) Multijurisdiction Prisoners Located in California. At all hearings at which a prisoner is being considered for parole, all multijurisdiction prisoners located in California shall have the rights specified in Sections 2245-2255.

(b) Multijurisdiction Prisoners Located Outside California. At all hearings at which a prisoner is being considered for parole all multijurisdiction prisoners located outside California shall have the rights specified in Section 2367. The hearing shall be a telephone hearing.

(c) Record. The record of any parole consideration hearing shall be a tape recording. Until July 1, 1978, for all multijurisdiction ISL prisoners, the record shall be a written summary of the hearing prepared at the hearing by department staff. After July 1, 1978, the record shall be a tape recording.

#### HISTORY:

1. Repealer of former Section 2373 and renumbering of Section 2374 to Section 2373 filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24). For history of former section, see Register 77, No. 44.

### **Article 11. Parole Consideration Criteria and Guidelines for Murders Committed on or After November 8, 1978, and Specified Attempted Murders**

#### **2400. Scope of Article.**

The criteria and guidelines in this article apply to prisoners sentenced to prison for first and second degree murders committed on or after November 8, 1978 and attempted murders where the perpetrator is sentenced for life pursuant to the provisions of Penal Code section 664. The guidelines in this article are based on the public's expressed intent in amending Penal Code sections 190 and 664 that a person convicted of first or second degree murder or attempted murder, as specified, should be incarcerated for an extended period of time.

The prisoner's minimum eligible parole date is established by statute. The amount of good conduct credit that a prisoner sentenced for first or second degree murder may earn to reduce the minimum eligible parole date is established by statute. (Penal Code sections 2930 et seq.) Life prisoners convicted of attempted murder do not earn these credits. The department will determine the minimum eligible parole date. The length of time a prisoner must serve prior to actual release on parole is determined by the board. The amount of postconviction credit a prisoner may earn to reduce the length of time prior to release on parole is determined by the board. This article implements Penal Code section 3041 and concerns only the board's exercise of discretion in determining whether a prisoner is suitable for parole and, if so, when the prisoner should be released on parole.



The standards for the department's action in reducing the minimum eligible parole date and the standards for the board's decision whether to reduce the period of confinement are different. The department's decisions pursuant to Penal Code sections 2930 et seq. do not affect the board's decision concerning postconviction credit pursuant to these rules.

A prisoner committed for first or second degree murder or attempted murder shall have his or her initial parole consideration hearing as provided in § 2268. The prisoner will have documentation hearings as provided in § 2269.1, but no specific amount of postconviction credit will be granted until the board has established a period of confinement.

Although many of the sections in this article are the same as the sections in Article 5, they are repeated in this article to avoid confusion between the rules applicable to prisoners who committed murders on or before November 7, 1978 and these rules which apply to prisoners who committed murders on or after November 8, 1978, and those who committed specified attempted murders. The suitability criteria are the same for both groups. The guidelines for establishing the periods of confinement are different because of the change in the minimum term for first degree murder and the change from a determinate to an indeterminate term for second degree murder and attempted murder. The provisions for adjusting the terms for other offenses are also different because of the change in Penal Code section 669 which permits courts to impose sentences consecutive to life terms (Stats. 1978, Ch. 579, eff. 1/1/79).

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 182, 190, 664, 2930 et seq., 3040, 3041, 3046 and 5076.1, Penal Code.

#### HISTORY:

1. New Article 11 (Sections 2400-2411) filed 9-8-81; effective thirtieth day thereafter (Register 81, No. 37).
2. Amendment filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).
3. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
4. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
5. Change without regulatory effect amending article heading and deleting the words "first degree" where they characterized the criminal offense of attempted murder in order to conform the regulation with the decision of the Supreme Court in *People v. Bright* (1996) 12 Cal.4th 652, 49 Cal.Rptr.2d 732, in which the court determined that the crime of attempted murder is not divided into degrees, filed 2-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 7).
6. Amendment of article heading, section and Note filed 5-13-2004 as an emergency; operative 5-17-2004 (Register 2004, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-14-2004 or emergency language will be repealed by operation of law on the following day.
7. Amendment of article heading, section and Note refiled 9-13-2004 as an emergency; operative 9-13-2004 (Register 2004, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-11-2005 or emergency language will be repealed by operation of law on the following day.
8. Amendment of article heading, section and Note refiled 1-6-2005 as an emergency; operative 1-11-2005 (Register 2005, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-11-2005 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-6-2005 order transmitted to OAL 5-11-2005 and filed 6-22-2005 (Register 2005, No. 25).

#### 2401. General.

A life prisoner shall be considered for parole for the first time at the initial parole consideration hearing scheduled as provided in Section 2268. A parole date shall be denied if the prisoner is found unsuitable for parole under Section 2402(c). A parole date shall be set if the prisoner is found suitable for parole under Section 2402(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to the threat to the public.

In setting the parole date the panel shall consider the Sentencing Rules for the Superior Courts. The panel shall also consider the criteria and guidelines set forth in this article for determining the suitability for parole and the setting of parole dates, considering the number of victims of the crime for which the prisoner was sentenced and any other circumstances in mitigation or aggravation.

The terms in this article are guidelines only. The suggested terms serve as the starting point for the board's consideration of each case on an individual basis. The board may establish a term above or below the guidelines when warranted and reasons are stated on the record. A prisoner shall not be released before the minimum eligible parole date.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3040 and 3041, Penal Code.

#### HISTORY:

1. Amendment filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
2. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### 2402. Determination of Suitability.

(a) General. The panel shall first determine whether the life prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) Information Considered. All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

(c) Circumstances Tending to Show Unsuitability. The following circumstances each tend to indicate unsuitability for release. These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

(A) Multiple victims were attacked, injured or killed in the same or separate incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.



(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.

(E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others.

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(d) Circumstances Tending to Show Suitability. The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.

(3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.

(5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(6) Lack of Criminal History. The prisoner lacks any significant history of violent crime.

(7) Age. The prisoner's present age reduces the probability of recidivism.

(8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

NOTE: Authority cited: Sections 3041 and 5076.2, Penal Code.  
Reference: Sections 3041 and 4801, Penal Code.

#### HISTORY:

1. New subsection (d)(5), subsection renumbering, and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

#### **2403. Base Term.**

(a) General. The panel shall set a base term for each life prisoner who is found suitable for parole. The base term shall be established solely on the gravity of the base crime, taking into account all of the circumstances of that crime. If the prisoner has been received in prison for more than one murder committed on or after November 8, 1978, the base crime is the most serious of the murders considering the facts and circumstances of the crime. If the prisoner has been sentenced to prison for murders committed before November 8, 1978 and for murders committed on or after November 8, 1978, the base offense shall be the most serious of the murders committed on or after November 8, 1978.

The base term shall be established by utilizing the appropriate matrix of base terms provided in this section. The panel shall determine the category most closely related to the circumstances of the crime. The panel shall impose the middle base term reflected in the matrix unless the panel finds circumstances in aggravation or mitigation.

If the panel finds circumstances in aggravation or in mitigation as provided in §§ 2404 or 2405, the panel may impose the upper or lower base term provided in the matrix by stating the specific reason for imposing such a term. A base term other than the upper, middle or lower base term provided in the matrix may be imposed by the panel if justified by the particular facts of the individual case and if the facts supporting the term imposed are stated.



(b) Matrix of Base Terms for First Degree Murder committed  
on or after November 8, 1978

## CIRCUMSTANCES

<i>First Degree Murder</i>	<i>A. Indirect</i>	<i>B. Direct or Victim Contribution</i>	<i>C. Severe Trauma</i>	<i>D. Torture</i>
Penal Code § 189 (in years and does not include post conviction credit as provided in § 2410).	Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing.	Death was almost immediate or resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victim acting in defense of self or property.	Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.	Victim was subjected to the prolonged infliction of physical pain through the use of nondeadly force prior to act resulting in death.
<i>I. Participating Victim</i>	25-26-27	26-27-28	27-28-29	28-29-30
Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred; e.g., crime partner, drug dealer, etc.				
<i>II. Prior Relationship</i>	26-27-28	27-28-29	28-29-30	29-30-31
Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, see Category IV.				
<i>III. No Prior Relationship</i>	27-28-29	28-29-30	29-30-31	30-31-32
Victim had little or no personal relationship with prisoner, or motivation for act resulting in death was related to the accomplishment of another crime; e.g., death of victim during robbery, rape, or other felony.				
<i>V. Threat to Public Order or Murder for Hire</i>	28-29-30	29-30-31	30-31-32	31-32-33
The act resulting in the victim's death constituted a threat to the public order including the murder of a police officer, correctional officer, public official, fellow patient or prisoner, any killing within an institution, or any killing where the prisoner hired and/or paid another person to commit the offense.				

## SUGGESTED BASE TERM



(c) Matrix of Base Terms for Second Degree Murder committed on or after November 8, 1978.

### CIRCUMSTANCES

<i>Second Degree Murder</i>	<i>A. Indirect</i>	<i>B. Direct or Victim Contribution</i>	<i>C. Severe Trauma</i>
Penal Code § 189 (in years and does not include post conviction credit as provided in § 2410).	Victim died of causes related to the act of the prisoner but was not directly assaulted by prisoner with deadly force; e.g., shock producing heart attack, a crime partner actually did the killing.	Death was almost immediate <i>or</i> resulted at least partially from contributing factors from the victim; e.g., victim initiated struggle or had goaded the prisoner. This does not include victims acting in defense of self or property.	Death resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.
<i>I. Participating Victim</i>	15-16-17	16-17-18	17-18-19
Victim was accomplice or otherwise implicated in a criminal act with the prisoner during which or as a result of which the death occurred; e.g., crime partner, drug dealer, etc.			
<i>II. Prior Relationship</i>	16-17-18	17-18-19	18-19-20
Victim was involved in a personal relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the act resulting in death. This category shall not be utilized if victim had a personal relationship but prisoner hired and/or paid a person to commit the offense.			
<i>III. No Prior Relationship</i>	17-18-19	18-19-20	19-20-21
Victim had little or no personal relationship with prisoner, <i>or</i> motivation for ct resulting in death was related to the accomplishment of another crime; e.g., death of victim during robbery, rape, or other felony.			

### SUGGESTED BASE TERM



(d) Matrix of Base Terms for Attempted Willful, Deliberate and Pre-meditated Murder committed on or after January 1, 1987.

### CIRCUMSTANCES

<i>Attempted Murder</i>	<i>A. Minor Injury</i>	<i>B. Victim Assaulted</i>	<i>C. Major Injury</i>	<i>D. Torture</i>
Penal Code § 664(a) (in years and does not include post conviction credit as provided in § 2410).	Victim unharmed or received minor injury.	Victim assaulted or otherwise seriously injured.	Victim's major injuries required extensive treatment or the victim was seriously disabled.	Victim was subjected to prolonged infliction of physical pain..
<i>I. Participating Victim</i>  Victim was accomplice or otherwise implicated in a criminal act with the prisoners; e.g., crime partner, drug dealer, etc.	7-8-9	8-9-10	9-10-11	10-11-12
<i>II. Prior Relationship</i>  Victim was involved in a personal relationship with prisoner; e.g., spouse, family member, friend, etc. which contributed to the motivation for the attempted murder. If victim had a personal relationship but prisoner hired and/or paid a person to commit the offense, use category IV.	8-9-10	9-10-11	10-11-12	11-12-13
<i>III. No Prior Relationship</i>  Victim had little or no personal relationship with prisoner <i>or</i> the motivation for the attempted murder was related to the accomplishment of another crime; e.g., robbery, rape, or other felony.	9-10-11	10-11-12	11-12-13	12-13-14
<i>IV. Threats to Public Order or Murder for Hire</i>  The attempted murder constituted a threat to the public order; e.g., police officer, correctional officer, public official, fellow patient or prisoner <i>or</i> any attempted murder within an institution, any attempted murder where the prisoner hired and/or paid another person to commit the offense.	10-11-12	11-12-13	12-13-14	13-14-15

### SUGGESTED BASE TERM



(e) Matrix of Base Terms for Attempted Murder of a Peace Officer or Firefighter committed on or after January 1, 1995.

### CIRCUMSTANCES

<i>Attempted Murder</i>	A. Minor Injury	B. Victim Assaulted	C. Major Injury	D. Torture
Penal Code § 664(e) (in years and does not include post conviction credit as provided in § 2410).	Victim unharmed or received minor injury.	Victim assaulted or otherwise seriously injured.	Victim's major injuries required extensive treatment or the victim was seriously disabled.	Victim was subjected to prolonged infliction of physical pain..
I. Peace officer or firefighter was placed at risk of serious injury or death due to the act(s) of the prisoner.	7-8-9	8-9-10	9-10-11	10-11-12
II. The act was committed while the prisoner was fleeing or was attempting to flee from law enforcement officers or the manner in which the act was committed created a risk of injury to others; e.g., high speed chase, shooting from a moving vehicle, fire set in the inhabited building.	8-9-10	9-10-11	10-11-12	11-12-13
III. The act was committed in an attempt to preclude discovery of a crime committed by the prisoner and/or his/her crime partners.	9-10-11	10-11-12	11-12-13	12-13-14
IV. The prisoner committed an act causing a peace officer or firefighter to respond and then ambushed the peace officer or firefighter.	10-11-12	11-12-13	12-13-14	13-14-15

### SUGGESTED BASE TERM



(f) Matrix of Base Terms for Attempted Willful, Deliberate and Premeditated Murder of a Peace Officer or Firefighter committed on

or after January 1, 1998.

### CIRCUMSTANCES

<i>Attempted Murder</i>	<i>A. Minor Injury</i>	<i>B. Victim Assaulted</i>	<i>C. Major Injury</i>	<i>D. Torture</i>
Penal Code § 664(f) (in years and does not include post conviction credit as provided in § 2410).	Victim unharmed or received minor injury.	Victim assaulted or otherwise seriously injured.	Victim's major injuries required extensive treatment or the victim was seriously disabled.	Victim was subjected to prolonged infliction of physical pain..
I. Peace officer or firefighter was placed at risk of serious injury or death due to the act(s) of the prisoners.	15-16-17	16-17-18	17-18-19	18-19-20
II. The act was committed while the prisoner was fleeing or was attempting to flee from law enforcement officers or the manner in which the act was committed created a risk of injury to others; e.g., high speed chase, shooting from a moving vehicle, fire set in the inhabited building.	16-17-18	17-18-19	18-19-20	19-20-21
III. The act was committed in an attempt to preclude discovery of a crime committed by the prisoner and/or his/her crime partners.	17-18-19	18-19-20	19-20-21	20-21-22
IV. The prisoner committed an act causing a peace officer or firefighter to respond and then ambushed the peace officer or firefighter.	18-19-20	19-20-21	20-21-22	21-22-23

### SUGGESTED BASE TERM

#### (g) Base Terms of Other Life Crimes.

In considering life crimes for which no matrix is provided, the panel shall impose a base term by comparison to offenses of similar gravity and magnitude in respect to the threat to the public, and shall consider any relevant judicial council rules and sentencing information as well as any circumstances in aggravation or mitigation of the crime.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 182, 3040 and 3041, Penal Code; In re Sims, Sacramento Superior Court Case No. 01F07562 (2002).

#### HISTORY:

1. Editorial correction filed 10-8-81; effective thirtieth day thereafter (Register 81, No. 41).
2. Amendment of subsection (a) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
3. Change without regulatory effect amending subsection (a) to clarify the applicability of the matrices in subsections (b) and (c) when setting the base term for prisoners sentenced to prison for

attempted murder, filed 2-16-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 7).

4. Amendment of section and Note filed 5-13-2004 as an emergency; operative 5-17-2004 (Register 2004, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-14-2004 or emergency language will be repealed by operation of law on the following day.
5. Amendment of section and Note refiled 9-13-2004 as an emergency; operative 9-13-2004 (Register 2004, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-11-2005 or emergency language will be repealed by operation of law on the following day.
6. Amendment of section and Note refiled 1-6-2005 as an emergency; operative 1-11-2005 (Register 2005, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-11-2005 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 1-6-2005 order, including further amendment of subsections (d)-(f) and Note, transmitted to OAL 5-11-2005 and filed 6-22-2005 (Register 2005, No. 25).



**2404. Circumstances in Aggravation of the Base Term.**

(a) General. The panel may impose the upper base term or another term longer than the middle base term upon a finding of aggravating circumstances. Circumstances in aggravation of the base term include:

- (1) The crime involved some factors described in the appropriate matrix in a category higher on either axis than the categories chosen as most closely related to the crime;
- (2) The victim was particularly vulnerable;
- (3) The prisoner had a special relationship of confidence and trust with the victim, such as that of employee-employer;
- (4) The murder was committed to preclude testimony of potential or actual witnesses during a trial or criminal investigation;
- (5) The victim was intentionally killed because of his race, color, religion, nationality or country or origin;
- (6) During the commission of the crime the prisoner had a clear opportunity to cease but instead continued;
- (7) The manner in which the crime was committed created a potential for serious injury to persons other than the victim of the crime;
- (8) The murder was wanton and apparently senseless in that it was committed after another crime occurred and served no purpose in completing that crime;
- (9) The corpse was abused, mutilated or defiled;
- (10) The prisoner went to great lengths to hide the body or to avoid detection;
- (11) The murder was committed to prevent discovery of another crime;
- (12) The murder was committed by a destructive device or explosives;
- (13) There were multiple victims for which the term is not being enhanced under Section 2407;
- (14) The prisoner intentionally killed the victim by the administration of poison;
- (15) The prisoner intentionally killed the victim by lying in wait;
- (16) The prisoner occupied a position of leadership or dominance over other participants in the commission of the crime, or the prisoner induced others to participate in the commission of the crime;
- (17) The prisoner has a history of criminal behavior for which the term is not being enhanced under Section 2407;
- (18) The prisoner has engaged in other reliably documented criminal conduct which was an integral part of the crime for which the prisoner is currently committed to prison;
- (19) The prisoner was on probation or parole or was in custody or had escaped from custody at the time the crime was committed;
- (20) Any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3040 and 3041 Penal Code.

**2405. Circumstances in Mitigation of the Base Term.**

(a) General. The panel shall impose the lower base term or another term shorter than the middle base term upon a finding of mitigating circumstances. Circumstances in mitigation of the base term include:

- (1) The crime involved some factors described in the appropriate matrix in a category lower on either axis than the categories chosen as most closely related to the crime;
- (2) The prisoner participated in the crime under partially excusable circumstances which do not amount to a legal defense;
- (3) The prisoner had no apparent predisposition to commit the crime but was induced by others to participate in its commission;

(4) The prisoner tried to help the victim or sought aid after the commission of the crime or tried to dissuade a crime partner from committing other offenses;

(5) The prisoner was a passive participant or played a minor role in the commission of the crime;

(6) The crime was committed during or due to an unusual situation unlikely to reoccur;

(7) The crime was committed during a brief period of extreme mental or emotional trauma;

(8) The prisoner has a minimal or no history of criminal behavior;

(9) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(10) Any specific factors in mitigation, including those listed in the Sentencing Rules for Superior Courts.

NOTE: Authority cited: Sections 3041 and 5076.2, Penal Code. Reference: Sections 3040, 3041 and 4801, Penal Code.

**HISTORY:**

1. New subsection (a)(9), subsection renumbering, and amendment of Note filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

**2406. Adjustment for Weapons, Great Loss and Prior Prison Terms.**

(a) General. Effective January 1, 1979, Penal Code Section 669 was amended to permit the court to impose enhancements under Penal Code Sections 12022, 12022.5, 12022.6 and 667.5 consecutive to a life sentence (Stats. 1978, Ch. 579). Since the court has discretion whether to impose or strike the punishment upon a finding that the prisoner used a deadly or dangerous weapon, was armed with a firearm, used a firearm, caused great loss or served prior prison terms, the board shall consider the court's action in determining the adjustment under this section.

(b) Punishment Imposed by the Court. If the court imposed the consecutive punishment for the enhancement, the board shall not add an additional adjustment for using a deadly or dangerous weapon, being armed with a firearm, using a firearm, causing great loss in committing the murder, or having served a prior prison term.

(c) Punishment Stricken by Court. If the court struck the punishment upon a finding of circumstances in mitigation, the board shall consider any circumstances in mitigation. The board may add an adjustment for using a deadly or dangerous weapon, being armed with a firearm, using a firearm, causing great loss or having served a prior prison term. The suggested adjustment is one-half the punishment that was stricken by the court.

(d) No Allegation or Finding. If the board finds that the prisoner used a deadly or dangerous weapon, was armed with a firearm, used a firearm, caused great loss or served a prior prison term although that fact was not found to be true at the time of the prisoner's conviction, the board may add an adjustment based on that finding. The adjustment should be less than the adjustment suggested in subdivision (c) of this section.

In adding adjustments for prior prison terms under this subsection, the panel should consider the length of time between the prisoner's release from custody and commission of a new offense.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 3040, 3041, 12022, 12022.5, 12022.6 and 12022.7, Penal Code.

#### **2407. Adjustments for Other Offenses.**

(a) General. Effective January 1, 1979 Penal Code Section 669 was amended to permit the court to impose sentences for other crimes to be served consecutively to a life sentence (Stats. 1978, Ch. 579). Since the court has discretion to order that the sentences for more than one crime be served consecutively, the board shall consider the court's action in determining the adjustment pursuant to this section.

(b) Multiple Convictions.

(1) General. The board shall not add adjustments for convictions for which the prisoner has been pardoned or which have been reversed by an appellate court.

(2) Consecutive Life Sentences Imposed by the Court. If the court imposed consecutive life sentences the board shall determine the base crime and base term as provided in Section 2403(a). The board shall add adjustments for the remaining life crimes. The adjustment for each remaining life crime shall be a period of time commensurate with the nature of the crime but no less than the period of parole ineligibility for the crime. In no case will the parole date for consecutive sentences be earlier than the parole date for concurrent sentences.

(3) Concurrent Life Sentences Imposed by the Court. If the court imposed concurrent life sentences, the board may add an adjustment because the prisoner has been convicted of more than one crime. The suggested adjustment is the greater of:

(A) Time served on the nonbase life crime prior to reception on the base offense; or

(B) The following adjustment:

1. First degree murder: 13 years for a first degree murder committed on or after November 8, 1978.

2. Second degree murder: 8 years for a second degree murder committed on or after November 8, 1978.

3. One-half the period of parole ineligibility for other life crimes.

(4) Consecutive Nonlife Sentences Imposed by the Court. If the court imposed consecutive nonlife sentences the board shall not add additional adjustment for the nonlife crime.

(5) Concurrent Nonlife Sentences Imposed by the Court. If the court imposed concurrent nonlife sentences, the board may add an adjustment because the prisoner has been convicted of more than one crime. The suggested adjustment is the greater of:

(A) Time served for the nonlife crime prior to reception on the life offense; or

(B) One-half the determinate term imposed by the court; or

(C) One-half the term that would be established under Section 2271(e) for crimes which carry a sentence of one year and one day.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 1170, 3040 and 3041, Penal Code.

#### **HISTORY:**

1. Amendment of subsection (b)(3)(B) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### **2408. Circumstances in Aggravation of the Adjustment for Other Crimes.**

Circumstances which may justify imposition of an adjustment for another crime higher than that suggested in Section 2407 include:

(a) Pattern of Violence. A victim was seriously injured or killed in the course of the other crime, or there was a substantial likelihood of serious injury or death resulting from the acts of the prisoner.

(b) Numerous Crimes. The other crime was one of a series of crimes which occurred during a single period of time, showing a pattern of similar conduct resulting in convictions, but not resulting in adjustments under Section 2407.

(c) Crimes of Increasing Seriousness. The prisoner has committed multiple crimes which indicate a significant pattern of increasingly serious criminal conduct.

(d) Independent Criminal Activity. The other crime and its objective were independent of the base crime or the other crime was committed at a different time and place, indicating a significant pattern of criminal behavior rather than a single period of aberrant behavior.

(e) Status. The prisoner was on probation or parole or was in custody or had escaped from custody when the crime was committed.

(f) Vulnerability. The victim was particularly vulnerable.

(g) Other. The other crime included any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 1170, 3040 and 3041, Penal Code; Sentencing Rules for the Superior Courts.

#### **2409. Circumstances in Mitigation of the Adjustment for Other Crimes.**

Circumstances which may justify imposition of an adjustment for another crime lower than that suggested in Section 2407, or which may justify no adjustment, include:

(a) Successful Completion of Probation or Parole. The prisoner's performance on probation or parole for the other crime was good, and the prisoner was free of criminal convictions for a reasonable period of time following completion of probation or parole.

(b) Insignificant Prior Record. The other crime indicates an insignificant pattern of prior criminal behavior. For example, the other crime is unrelated to the principal offense in time, in the kind of criminal conduct involved, or in the apparent motivation or cause of the criminal conduct.

(c) Probation. The prisoner was granted probation after conviction of the other crime.

(d) Other. The other crime included any other circumstances in mitigation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 1170, 3040 and 3041, Penal Code; Sentencing Rules for the Superior Courts.

#### **2410. Postconviction Credit.**

(a) General. Life prisoners may earn postconviction credit for each year spent in state prison from the date the life term starts. Prior to the initial parole consideration hearing life prisoners shall have documentation hearings as provided in Section 2269.1. At the documentation hearings, the board shall document the prisoner's performance, participation, behavior and other conduct as specified in subsection (c) of this section. Credit shall not be granted or denied at these hearings. The documentation shall be used by the panel which establishes a parole date to determine how much, if any, credit should be granted for the years served prior to the establishment of the parole date. Once a parole date is established, postconviction credit for time served since the last hearing shall be considered at the progress hearings scheduled as provided in Section 2269.

The board shall consider each case individually in determining the amount of credit. This section provides guidelines for granting credit but a panel may grant more or less credit as appropriate.



(b) Amount of Credit. Postconviction credit shall be granted to life prisoners in a manner which allows similar amounts of time to prisoners in similar circumstances. The suggested amount of postconviction credit is zero to four months for each year served since the date the life term started excluding any time during which service of the life term is tolled.

The board may grant more or less than four months annual postconviction credit when the prisoner's performance, participation or behavior warrants such adjustment of credit. Less than four months credit may be granted if the prisoner fails to meet the general expectations set forth in Section 2410(c). More than four months credit may be granted if the prisoner demonstrates exceptional performance in a work assignment, exceptional participation in self-help or rehabilitative programs, or other exemplary conduct. If the panel grants more than four months of postconviction credit for any year, the case shall be reviewed as provided in Sections 2041-2043.

Provided, however, postconviction credits which would advance the parole release date to less than 180 days from the date of the hearing shall not be granted unless or until the parole review authority of the Governor is exercised pursuant to Penal Code section 3041.1.

(c) Criteria. In determining the amount of postconviction credit to be granted, the panel shall consider the following:

(1) Performance in Institutional Work Assignments. All life prisoners are presumed to work and to perform satisfactorily in work assignments (see CDC Rules 3040 and 3041). Lack of a work assignment shall not necessarily prevent the granting of postconviction credit. The panel shall consider the nature and availability of work assignments at the institution, the prisoner's custody status, and any other impediments to the prisoner's receiving work assignment.

(2) Participation in Self-Help and Rehabilitative Programs. All life prisoners are presumed to participate in programs for self-development (refer to CDC Rules 3040 and 3041). Lack of program participation shall not necessarily prevent the granting of postconviction credit. The panel shall consider the nature and availability of programs at the institution, the prisoner's custody status, and any other impediments to the prisoner's participation in programs.

(3) Behavior in the Institutional Setting. All life prisoners are presumed to behave in a disciplinary-free manner, in accordance with state law and departmental regulations (refer to CDC Rules 3000-3021). However, a minor disciplinary offense shall not necessarily prevent the granting of postconviction credit.

(d) Credit Not Granted. No annual postconviction credit shall be granted in the case of any prisoner who commits serious (as defined in 15 CCR Section 3315) or numerous (more than three) infractions of departmental regulations, violates any state law, or engages in other conduct which could result in rescission of a parole date (see Section 2451) unless the panel finds evidence in mitigation and supports such finding with a statement of its reasoning.

Consistent unsatisfactory performance in work assignments, consistent failure to engage in program participation, or consistent overall negative behavior demonstrated by numerous minor disciplinary reports may, individually or cumulatively, justify the withholding of annual postconviction credit which otherwise could have been granted.

(e) Change in Parole Date. Once postconviction credit is granted for particular year of imprisonment, the credit shall be applied to any new term established after rescission or reconviction after a reversal.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3040 and 3041, Penal Code. In re Stanley, 54 Cal.App.3d 1030 (1976).

#### HISTORY:

1. Amendment of subsection (d) and Note filed 8-15-91; operative 9-16-91 (Register 91, No. 51).
2. Amendment of subsections (b) and (c)(2) filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

#### 2411. Fixing a Parole Date.

(a) Total Period of Confinement. The terms established for the base crime and any adjustments shall be added together resulting in a total period of confinement. The total period of confinement shall be reduced by any postconviction credit granted under Section 2410. This results in the adjusted period of confinement.

(b) Period of Prison Confinement. Any preprison credit shall be deducted from the total period of confinement as provided in Sections 2341-2345. This results in the total period of prison confinement. The total period of prison confinement shall be reduced by any postconviction credit granted under Section 2410. This results in the adjusted period of prison confinement.

(c) Release Date. The adjusted period of prison confinement and any time at large shall be added to the date the life term starts. This results in the parole date. For purposes of determining the parole date, the life term starts on:

(1) Consecutive Life Sentences. The date the prisoner was received under Penal Code Section 2900 or 1203.2a for the earliest life sentence if the prisoner is sentenced to prison with consecutive life sentences.

(2) Concurrent Life Sentences. The date the prisoner was received under Penal Code Section 2900 or 1203.2a for the earliest life sentence used in calculating the parole date if the prisoner is sentenced to prison with concurrent life sentences.

(3) Consecutive Nonlife Sentences for Crimes or Enhancements. The date the prisoner completed serving the nonlife sentence or the sentence for the consecutive enhancement under Penal Code Section 669 if the prisoner is sentenced to prison with nonlife sentences which are consecutive to life sentence or with court imposed consecutive enhancements.

(4) Concurrent Nonlife Sentences. The date the prisoner was received for the life crime under Penal Code Section 2900 or 1203.2a, if the prisoner is sentenced to prison with nonlife sentences which are concurrent to the life sentences. If the panel added any adjustments for the nonlife crimes and the prisoner was received for those crimes prior to the date he was received for the life crime, the time served for those nonlife crimes prior to the date the life term starts shall be deducted from the adjustment for the nonlife crime.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 669, 1203.2a and 2900, Penal Code.

#### HISTORY:

1. Amendment of subsection (b) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

### Article 12. Parole Consideration Criteria and Guidelines for Habitual Offenders Sentenced to Life Terms Under Penal Code Section 667.7

#### 2420. Scope of Article.

The criteria and guidelines in this article shall apply to prisoners sentenced to a term of 20 years to life as habitual offenders under Penal Code Section 667.7 for crimes committed on or after January 1, 1982. The guidelines in this article shall be construed to be based on the public's expressed intent in adding Section 667.7 to the Penal Code that a person convicted of a felony in which the person inflicts great bodily injury or who personally uses force likely to produce great bodily injury, and who has served two or more prior prison terms for specified crimes should be incarcerated for an extended period of time.



The general statement in Section 2400 regarding the differences between the minimum eligible parole date and the parole release date shall be complied with as if incorporated herein.

A prisoner committed as a habitual offender shall have his initial parole consideration hearing in the thirteenth month prior to the minimum eligible parole date. The prisoner shall have documentation hearings as provided in Section 2269.1, but no specific amount of postconviction credit shall be granted until the board has established a period of confinement.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 2930-2933, 3040 and 3041, Penal Code.

#### HISTORY:

1. New Article 12 (Sections 2420-2429.1) filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).

#### **2421. General.**

A habitual offender shall be considered for parole for the first time at the initial parole consideration hearing. A parole date shall be denied if the prisoner is found unsuitable for parole under Section 2422(c). A parole date shall be set if the prisoner is found suitable for parole under Section 2422(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to the threat to the public.

In setting the parole date the panel shall consider the Sentencing Rules for the Superior Courts. The panel shall also consider the criteria and guidelines set forth in this article for determining suitability for parole and the setting of parole dates, the circumstances of the crimes for which the prisoner was sentenced, and any circumstances in aggravation or mitigation.

In setting the base period of confinement, the panel shall consider the circumstances of the current and prior offenses resulting in the conviction as a habitual offender, including the number of prior prison terms for specified crimes and the extent of injury to the victim of the current offense. The panel may then make adjustments to the base period of confinement for other factors.

The circumstances tending to show suitability and unsuitability, and the circumstances in aggravation and mitigation contained in this article shall be construed as guidelines only. The panel may make findings outside the guidelines when warranted in the individual case and reasons are stated on the record.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 3040 and 3041, Penal Code.

#### **2422. Determination of Suitability.**

(a) General. The panel shall first determine whether the prisoner is suitable for release on parole. Regardless of the length of time served, a prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) Information Considered. At all parole consideration hearings for habitual offenders the panel shall consider the information described in Section 2281(b).

(c) Circumstances Tending to Show Unsuitability. The panel shall consider those circumstances listed in Section 2281(c) which the panel finds are appropriate to the case of a habitual offender. The panel may make other findings when warranted by the circumstances of an individual case and reasons are stated in the record.

(d) Circumstances Tending to Show Suitability. The panel shall consider those circumstances listed in Section 2281(d) which the panel finds are appropriate to the case of a habitual offender. The panel may make other findings when warranted by the circumstances of an individual case and reasons are stated in the record.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7 and 3041, Penal Code.

#### **2423. Base Term.**

(a) General. The panel shall set a base term for each habitual offender who is found suitable for parole. The base term shall be established based on the circumstances of the series of prior and current offenses which resulted in conviction as a habitual offender, considered as a whole.

The base term shall be established by utilizing the appropriate matrix of base terms provided in this section. The panel shall determine the category most closely related to the circumstances of the most serious of the series of prior and current offenses which resulted in commitment as an habitual offender. The panel shall impose the middle base term reflected in the matrix unless the panel finds circumstances in aggravation or mitigation.

If the panel finds circumstances in aggravation or in mitigation as provided in Sections 2424 or 2425, the panel may impose the upper or lower base term provided in the matrix by stating the specific reason for imposing such a term. A base term other than the upper, middle, or lower base term provided in the matrix may be imposed by the panel if justified by the particular facts of the individual case and if the facts supporting the term imposed are stated.



(b) Matrix of base terms for prisoners sentenced to terms of 20 years to life as habitual offenders under Penal Code Section 667.7 for crimes committed on or after January 1, 1982.

## CIRCUMSTANCES

<i>Habitual Offenders</i>	A. Crime included a single victim who did not require extensive medical treatment or prisoner was a passive participant or played a minor role in the crime.	B. Crime involved multiple victims or there were multiple injuries inflicted on the same or different victims.	C. Victim was tortured or suffered loss of bodily member or organ, or duration of offense was lengthy and prisoner had an opportunity to cease but instead continued.	D. Crime involved intricate planning or there exists facts which indicate the crime was committed in a manner which demonstrates an exceptionally callous disregard for human suffering.
Penal Code § 667.7 (in years and does not include post conviction credit as provided in § 2410).				
<b>I. Contributing Victim</b>	20-22-24	21-23-25	23-24-26	3-25-27
While not an accomplice, victim was involved in criminal activity which contributed to the motivation for the crime, e.g., drug dealer, sex offender, etc.				
<b>II. Prior Relationship</b>	21-23-25	22-24-26	23-25-27	24-26-28
Victim was involved in a prior relationship with prisoner (spouse, family member, friend, etc.) which contributed to the motivation for the crime.				
<b>III. Vulnerable Victim</b>	22-24-26	23-25-27	24-26-28	25-27-29
Victim was particularly vulnerable due to age or physical or mental condition.				
<b>IV. Injury to Victim</b>	23-25-27	24-26-28	25-27-29	26-28-30
Victim suffered fatal injury, required extensive medical treatment or was permanently disabled as result of the crime.				

## SUGGESTED BASE TERM

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code.  
Reference: Sections 667.7 and 3041, Penal Code.

### HISTORY:

- Amendment of section and Note filed 3-15-93; operative 4-14-93 (Register 93, No. 12).
- Editorial correction adding subsection (b) and matrix (Register 93, No. 17).

### **2424. Circumstances in Aggravation of the Base Term.**

Circumstances in aggravation of the base term include but are not limited to:

(a) Criminal History.

(1) The current offense or offenses and the offenses underlying the prior prison terms are violent offenses as defined in Penal Code Section 667.5(c).

(2) The current offense or offenses and the offenses underlying the prior prison terms were committed within a relatively short time after release on parole.

(3) The prisoner has been convicted of other offenses during the periods between the commission of the current offense and the offenses underlying the prior prison terms.

(4) The prisoner has served more than two prior prison terms for offenses listed in Penal Code Section 667.7.

(b) Circumstances of Offenses.

(1) The current offense or offenses resulted in greater injury to one or more victims than is required for a finding under Penal Code Section 12022.7.

(2) The current offense or offenses or the offenses underlying the prior prison terms resulted in death to one or more victims.



(3) The circumstances of the current offense or offenses and the offenses underlying the prior prison terms indicate the prisoner preys on victims who are particularly vulnerable, or who occupy a position of trust in relation to the prisoner.

(4) The circumstances of the current offense or offenses and the offenses underlying the prior prison terms indicate a pattern of the commission of similar violent crimes; i.e., conviction for three or more sexual offenses or three or more offenses involving use of a firearm.

(c) The Circumstances in Aggravation enumerated in Sections 2283, except subdivision (a)(1), and 2404, as appropriate to the case of a habitual offender.

(d) Any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 3040 and 3041, Penal Code.

#### **2425. Circumstances in Mitigation of Base Term.**

Circumstances in mitigation include but are not limited to:

(a) Criminal History.

(1) The current offense or offenses and the offenses underlying the prior prison terms are non-violent offenses not listed in Penal Code Section 667.5(c).

(2) There is a relatively long period of crime-free conduct, including successful completion of parole, between commission of the offenses resulting in commitment as a habitual offender.

(3) The prisoner has no other convictions for violent crimes as defined in Penal Code Section 667.5(c) other than those resulting in commitment as a habitual offender.

(b) Circumstances of Offenses.

(1) The great bodily injury to the victim in the current offense was no greater than that required for a finding under Penal Code Section 12022.7, and the prisoner did not personally inflict injury on any other victim of any offense of which he has previously been convicted.

(2) The current offense or offenses did not involve use of a firearm, and the offenses underlying the prior prison terms did not involve use of a firearm, or arming or use of a deadly or dangerous weapon.

(c) The Circumstances in Mitigation enumerated in Sections 2284, except subdivision (a)(1), and 2405, as appropriate to the case of a habitual offender.

(d) Any other circumstances in mitigation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: 5076.2, Penal Code. Reference: Sections 667.7, 3040 and 3041, Penal Code.

#### **2426. Adjustment for Weapons, Great Loss, Great Bodily Injury and Prior Prison Terms.**

(a) The panel shall consider the addition of adjustments for weapons, great loss, and prior prison terms as provided in Section 2406.

(b) The panel shall consider the addition of an adjustment for great bodily injury using the guidelines as provided in Section 2406 for the addition of adjustments for weapons, great loss, and prior prison terms.

(c) The panel shall not add adjustments for prior prison terms or findings of great bodily injury which resulted in the commitment as a habitual offender.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.5, 667.7, 3040, 3041, 12022, 12022.5, 12022.6 and 12022.7, Penal Code.

#### **2427. Adjustments for Other Offenses.**

(a) General. Effective January 1, 1979, Penal Code Section 669 was amended to permit the court to impose sentences for other crimes to be served consecutively to a life sentence (Stats. 1978, Ch. 579). Since the court has discretion to order that the sentences for more than one crime be served consecutively, the board shall consider the court's action in determining the adjustment pursuant to this section.

(b) Multiple Convictions.

(1) General. The board shall not add adjustments for convictions for which the prisoner has been pardoned or which have been reversed by an appellate court.

(2) Consecutive Life Sentences Imposed by the Court. If the court imposed consecutive life sentences the board shall determine the base crime and base term. The board shall add adjustments for the remaining life crimes. The adjustment for each remaining life crime shall be a period of time commensurate with the nature of the crime but no less than the period of parole ineligibility for the crime. In no case will the parole date for consecutive sentences be earlier than the parole date for concurrent sentences.

(3) Concurrent Life Sentences Imposed by the Court. If the court imposed concurrent life sentences, the board may add an adjustment because the prisoner has been convicted of more than one crime. The suggested adjustment is the greater of:

(A) Time served on the nonbase life crime prior to reception on the base offense; or

(B) The following adjustment:

1. First degree murder: 13 years for a first degree murder committed on or after November 8, 1978.

2. Second degree murder: 8 years for a second degree murder committed on or after November 8, 1978.

3. One-half the period of parole ineligibility for other life crimes.

(4) Consecutive Nonlife Sentences Imposed by the Court. If the court imposed consecutive nonlife sentences the board shall not add additional adjustments for the nonlife crimes.

(5) Concurrent Nonlife Sentences Imposed by the Court. If the court imposed concurrent nonlife sentences, the board may add an adjustment because the prisoner has been convicted of more than one crime. The suggested adjustment is the greater of:

(A) Time served for the nonlife crime prior to reception on the life offense; or

(B) One-half the determinate term imposed by the court; or

(C) One-half the term that would be established under Section 2271 for crimes which carry a sentence of a year and a day.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 669, 1170, 3040 and 3041, Penal Code.

#### **2428. Circumstances in Aggravation and Mitigation of the Adjustment for Other Crimes.**

(a) Circumstances in Aggravation. Circumstances which may justify imposition of an adjustment for another crime higher than that suggested in Section 2427 include:

(1) Pattern of Violence. A victim was seriously injured or killed in the course of the other crime, or there was a substantial likelihood of serious injury or death resulting from the acts of the prisoner.

(2) Numerous Crimes. The other crime was one of a series of crimes which occurred during a single period of time, showing a pattern of similar conduct resulting in convictions but not resulting in adjustments under Section 2427.

(3) The prisoner has committed multiple crimes which indicate a significant pattern of increasingly serious criminal conduct.



(4) Independent Criminal Activity. The other crime and its objective were independent of the base crime or the other crime was committed at a different time and place.

(5) Status. The prisoner was on probation or parole or had escaped from custody when the other crime was committed.

(6) Vulnerability. The victim was particularly vulnerable.

(7) Other. The other crime included any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

(b) Circumstances in Mitigation. Circumstances which may justify imposition of an adjustment for another crime lower than that suggested in Section 2427, or which may justify no adjustment, include:

(1) Successful Completion of Probation or Parole. The prisoner's performance on probation or parole for the other crime was good, and the prisoner was free of criminal convictions for a reasonable period of time following completion of probation or parole.

(2) Probation. The prisoner was granted probation after conviction of the other crime.

(3) Other. The other crime included any other circumstances in mitigation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 669, 1170, 3040 and 3041, Penal Code; and Sentencing Rules for the Superior Courts.

#### **2429. Postconviction Credit.**

The application of postconviction credit shall be considered as provided in Section 2410.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 3040 and 3041, Penal Code; In re Stanley, 54 Cal.App.3d 1030 (1976).

#### **2429.1. Fixing a Parole Date.**

The parole date shall be determined as provided in Section 2411.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.7, 669, 1203.2a and 2900, Penal Code.

### **Article 13. Parole Consideration Criteria and Guidelines for Sex Offenders Sentenced to Life Terms Under Penal Code Section 667.51**

#### **2430. Scope of Article.**

The criteria and guidelines in this article shall apply to prisoners sentenced to a term of 15 years to life under Penal Code Section 667.51. The guidelines in this article shall be construed as based on the public's expressed intent in adding Section 667.51 to the Penal Code that a person convicted of lewd or lascivious acts committed against a child under the age of 14, and who has served 2 or more prior prison terms for specified sex crimes should be incarcerated for an extended period of time.

The general statement in Section 2400 regarding the differences between the minimum eligible parole date and the parole release date shall be construed as if incorporated herein.

A person committed under Penal Code Section 667.51 shall have his initial parole consideration hearing in the thirteenth month prior to the minimum eligible parole date. The prisoner shall have documentation hearings as provided in Section 2269.1, but no specific amount of postconviction credit shall be granted until the board has established a period of confinement.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 667.7, 2930-2933, 3040 and 3041, Penal Code.

#### **HISTORY:**

1. New Article 13 (Sections 2430-2439.1) filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).

#### **2431. General.**

A sex offender shall be considered for parole for the first time at the initial parole consideration hearing. A parole date shall be denied if the prisoner is found unsuitable for parole under Section 2432(c). A parole date shall be set if the prisoner is found suitable for parole under Section 2432(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to the threat to the public.

In setting a parole date the panel shall consider the Sentencing Rules for the Superior Courts. The panel shall also consider the criteria and guidelines set forth in this article for determining suitability for parole and the setting of parole dates, the circumstances of the crimes for which the prisoner was sentenced and any circumstances in aggravation or mitigation.

In setting a base period of confinement, the panel shall consider the circumstances of the current and prior offenses resulting in conviction under Penal Code Section 667.51.

The circumstances tending to show suitability and unsuitability, and the circumstances in aggravation and mitigation contained in this article shall be construed as guidelines only. The panel may make findings outside the guidelines when warranted in the individual case and reasons are stated on the record.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 3040 and 3041, Penal Code.

#### **2432. Determination of Suitability.**

(a) General. The panel shall first determine whether the prisoner is suitable for release on parole. Regardless of the length of time served, a prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) Information Considered. At all parole consideration hearings for sex offenders the panel shall consider the information described in Section 2281(b).

(c) Circumstances Tending to Show Unsuitability. The panel shall consider those circumstances listed in Section 2281(c) which the panel finds are appropriate to the case of a sex offender. The panel may make other findings when warranted by the circumstances of an individual case and reasons are stated in the record.

(d) Circumstances Tending to Show Suitability. The panel shall consider those circumstances listed in Section 2281(d) which the panel finds are appropriate to the case of a sex offender. The panel may make other findings when warranted by the circumstances of an individual case and reasons are stated in the record.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51 and 3041, Penal Code.

#### **2433. Base Term.**

(a) General. The panel shall set a base term for each sex offender who is found suitable for parole. The base term shall be established based on the circumstances of the series of prior and current offenses which resulted in conviction as a sex offender, considered as a whole. The panel shall set a base term which it finds to be appropriate in an individual case after consideration of the Circumstances in Aggravation listed in Section 2434 and the Circumstances in Mitigation listed in Section 2435, and any other circumstances which appear to be important in the judgment of the panel.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51 and 3041, Penal Code.

#### **2434. Circumstances in Aggravation of the Base Term.**

Circumstances in aggravation of the base term include:

- (a) Criminal History.
  - (1) The current offense or offenses and the offenses underlying the prior prison terms are violent offenses as defined in Penal Code Section 667.5(c).
  - (2) The current offense or offenses and the offenses underlying the prior prison terms were committed within a relatively short time of each other.
  - (3) The prisoner has been convicted of offenses, misdemeanors or felonies, involving sexually aberrant behavior other than those resulting in the life sentence under Penal Code Section 667.51.
  - (4) The prisoner has served more than two prior prison terms for offenses listed in Penal Code Section 667.51.
  - (5) The current or prior commitments to state prison resulted from multiple convictions for sex and sex-related offenses.
    - (b) Circumstances of Offenses.
      - (1) The current offense or offenses or the offenses underlying the prior prison terms resulted in physical or psychological injury to the victim beyond that occasioned by the sex act.
      - (2) The current offense or offenses or the offenses underlying the prior prison terms involved arming or use of a firearm or deadly or dangerous weapon.
      - (3) The current offense or offenses and the offenses underlying the prior prison terms establish a pattern of sexual crimes against children.
      - (4) The circumstances of the current offense or offenses and the offenses underlying the prior prison terms indicate the prisoner preys on victims who are particularly vulnerable resulting from factors other than the age or sex of the victim, and/or who occupy a position of trust in relation to the prisoner.
  - (c) The Circumstances in Aggravation listed in Sections 2283, except subdivision (a)(1), and 2404, as appropriate to the case of a habitual sex offender.
  - (d) Any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 3040 and 3041, Penal Code.

#### **2435. Circumstances in Mitigation of the Base Term.**

Circumstances in mitigation of the base term include:

- (a) Criminal History.
  - (1) The offenses underlying the prior prison terms were for non-violent offenses not listed in Penal Code Section 667.5(c).
  - (2) The prisoner has no other convictions for sex or sex-related offenses other than those resulting in commitment under Penal Code Section 667.51.
  - (3) The current and previous commitments resulted from a single sex offense committed against a single victim.
- (b) Circumstances of Offense.
  - (1) The current offense or offenses and the offenses underlying the prior prison terms resulted in no physical or psychological injury to any victim beyond that directly resulting from the sex act.
  - (2) The current offense or offenses and the offenses underlying the prior prison terms did not involve arming or use of a firearm or deadly or dangerous weapon.
  - (3) The commission of the offenses resulting in commitment under Penal Code Section 667.51 appear to have resulted from a psychological condition for which the prisoner has voluntarily and continuously sought treatment.

(c) The Circumstances in Mitigation listed in Sections 2284, except (a)(1), and 2405, as appropriate to the case of a habitual sex offender.

(d) Any other circumstances in mitigation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 3040 and 3041, Penal Code.

#### **2436. Adjustment for Weapons, Great Loss, Great Bodily Injury and Prior Prison Terms.**

- (a) The panel shall consider the addition of adjustments for weapons, great loss, and prior prison terms as provided in Section 2406.
- (b) The panel shall consider the addition of an adjustment for great bodily injury using the guidelines as provided in Section 2406 for the addition of adjustments for weapons, great loss and prior prison terms.
- (c) The panel shall not consider adjustments for prior prison terms which resulted in the commitment as a sex offender.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.5, 667.51, 3040, 3041, 12022, 12022.5, 12022.6 and 12022.7, Penal Code.

#### **2437. Adjustments for Other Offenses.**

- (a) General. Effective January 1, 1979, Penal Code Section 669 was amended to permit the court to impose sentences for other crimes to be served consecutively to a life sentence (Stats. 1978, Ch. 579). Since the court has discretion to order that the sentences for more than one crime be served consecutively, the board shall consider the court's action in determining the adjustment pursuant to this section.
  - (b) Multiple Convictions.
    - (1) General. The board shall not add adjustments for convictions for which the prisoner has been pardoned or which have been reversed by an appellate court.
    - (2) Consecutive Life Sentences Imposed by the Court. If the court imposed consecutive life sentences the board shall determine the base crime and base term. The board shall add adjustments for the remaining life crimes. The adjustment for each remaining life crime shall be a period of time commensurate with the nature of the crime but no less than the period of parole ineligibility for the crime. In no case will the parole date for consecutive sentences be earlier than the parole date for concurrent sentences.
    - (3) Concurrent Life Sentences Imposed by the Court. If the court imposed concurrent life sentences, the board may add an adjustment because the prisoner has been convicted of more than one crime. The suggested adjustment is the greater of:
      - (A) Time served on the nonbase life crime prior to reception on the base offense; or
      - (B) The following adjustment:
        1. First degree murder: 13 years for a first degree murder committed on or after November 8, 1978.
        2. Second degree murder: 8 years for a second degree murder committed on or after November 8, 1978.
        3. One-half the period of parole ineligibility for other life crimes.
    - (4) Consecutive Nonlife Sentences Imposed by the Court. If the court imposed consecutive nonlife sentences the board shall not add additional adjustments for the nonlife crimes.
    - (5) Concurrent Nonlife Sentences Imposed by the Court. If the court imposed concurrent nonlife sentences, the board may add an adjustment because the prisoner has been convicted of more than one crime. The suggested adjustment is the greater of:
      - (A) Time served for the nonlife crime prior to reception on the life offense; or



- (B) One-half the determinate term imposed by the court; or
- (C) One-half the term that would be established under Section 2271 for crimes which carry a sentence of a year and a day.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 669, 1170, 3040 and 3041, Penal Code.

**2438. Circumstances in Aggravation and Mitigation of the Adjustment for Other Crimes.**

(a) Circumstances in Aggravation. Circumstances which may justify imposition of an adjustment for another crime higher than that suggested in Section 2437 include:

(1) Pattern of Violence. A victim was seriously injured or killed in the course of the other crime, or there was a substantial likelihood of serious injury or death resulting from the acts of the prisoner.

(2) Numerous Crimes. The other crime was one of a series of crimes which occurred during a single period of time, showing a pattern of similar conduct resulting in convictions but not resulting in adjustments under Section 2437.

(3) The prisoner has committed multiple crimes which indicate a significant pattern of increasingly serious criminal conduct.

(4) Independent Criminal Activity. The other crime and its objective were independent of the base crime or the other crime was committed at a different time and place.

(5) Status. The prisoner was on probation or parole or had escaped from custody when the other crime was committed.

(6) Other. The other crime included any other circumstances in aggravation including those listed in the Sentencing Rules for the Superior Courts.

(b) Circumstances in Mitigation. Circumstances which may justify imposition of an adjustment for another crime lower than that suggested in Section 2437, or which may justify no adjustment, include:

(1) Successful Completion of Probation or Parole. The prisoner's performance on probation or parole for the other crime was good, and the prisoner was free of criminal convictions for a reasonable period of time following completion of probation or parole.

(2) Probation. The prisoner was granted probation after conviction of the other crime.

(3) Other. The other crime included any other circumstances in mitigation including those listed in the Sentencing Rules for the Superior Courts.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 669, 1170, 3040 and 3041, Penal Code; and Sentencing Rules for the Superior Courts.

**2439. Postconviction Credit.**

The application of postconviction credit shall be considered as provided in Section 2410.

The parole date shall be determined as provided in Section 2411.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 3040 and 3041, Penal Code; In re Stanley, 54 Cal.App.3d (1976).

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 669, 1203.2a and 2900, Penal Code.

**2439.1. Fixing a Parole Date.**

The parole date shall be determined as provided in Section 2411.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 667.51, 669, 1203.2a and 2900, Penal Code.

## CHAPTER 4. POSTPONEMENT OR RESCISSION OF RELEASE

### Article 1. Initiating Proceedings

**2450. General.**

The ISL parole date of an ISL prisoner or the parole date of a life or non-life 1168 prisoner may be postponed or rescinded for good cause at a rescission hearing. Rescission proceedings refer to any proceedings which may result in the postponement or rescission of a release date.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041, 3041.5 and 3041.7, Penal Code.

**HISTORY:**

1. Amendment of section and new Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2451. Reportable Information.**

Department staff shall report to the board at the central office calendar conduct which may result in rescission proceedings. The board shall determine whether to initiate rescission proceedings. Examples of conduct which must be reported to the board include:

- (a) Disciplinary Conduct.
  - (1) Assault with a weapon.
  - (2) Escape.
  - (3) Physically assaultive behavior.
  - (4) Possession of a weapon without permission.
  - (5) Possession of controlled substances without a prescription.
  - (6) Attempt to escape.
  - (7) Urging others, with the intent to cause a riot, to commit acts of force or violence, at a time and place and under circumstances which produce a clear and present and immediate danger of a riot which results in acts of force or violence.
  - (8) Intentional destruction of state property valued in excess of \$50.
  - (9) Falsification of a significant record or document.
  - (10) Possession of escape tools without permission.
  - (11) Manufacture or sale of intoxicants.
  - (12) Threatening the board or Board staff.
  - (13) Other conduct which seriously disrupts institutional routine, or which strongly indicates that the prisoner is not ready for release, or which indicates that the prisoner is a danger to himself or others, or which department staff believes should be reported to the board.
- (b) Psychiatric Deterioration. Any prisoner whose mental state deteriorates to the point that there is a substantial likelihood that the prisoner would pose a danger to himself or others when released, and who is within 90 days of release, shall be reported to the board.
- (c) Fundamental errors occurred, resulting in the improvident granting of a parole date.
- (d) Other. Any new information which indicates that parole should not occur. Examples include: an inability to meet a special condition of parole, such as failure of another state to approve an interstate parole; or information significant to the original grant of parole was fraudulently withheld from the board.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 3060, Penal Code.

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**HISTORY:**

1. Editorial correction (Register 79, No. 38).
2. Amendment of section and new Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).



**2452. Procedure for Reporting.**

(a) Reporting. Department staff shall report to the board at the central office calendar any life, non-life 1168 or ISL prisoner who must be reported under s 2451.

(b) Time of Report. All cases shall be reported to the board prior to the prisoner's scheduled release date.

If the case has not been referred to the district attorney for prosecution, the case shall be reported to the board within 15 days of the conduct or the discovery of information leading to disciplinary charges.

If the case has been referred to the district attorney for prosecution, the case should be reported to the board on the earliest of the following dates:

- (1) Sixty days before the prisoner's parole date;
- (2) Within 15 days of the date upon which the district attorney notifies the department that the county will not prosecute the case;
- (3) Within 15 days of the date of the criminal prosecution. These time limits are directory only, and the Board may hold a rescission hearing if these time limits are not met in a particular case.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code.

**HISTORY:**

1. Amendment of subsection (b) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Repealer of subsections (c) and (d) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
3. Amendment of section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2453. Pre-Rescission Hearings.**

(a) Scheduling. If the prisoner is scheduled to be released within 20 days, a criminal prosecution is pending, and the criminal prosecution will not terminate before the scheduled release date, department staff shall schedule a pre-rescission hearing. The prisoner may waive the pre-rescission hearing.

A prisoner who has had or has waived a pre-rescission hearing on any one charge which alone is sufficiently serious to postpone or rescind the release date, is not entitled to a pre-rescission hearing on any other charges.

(b) Time Limits. Pre-rescission hearings should occur before the scheduled release date. Any delay beyond the scheduled release date must be authorized by the board at the central office calendar.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.5 and 3060, Penal Code.

**HISTORY:**

1. Amendment of section heading and section and new Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2454. Scheduling Rescission Hearings.**

The time limits specified in this section are directory, and failure to meet the time limits does not deprive the board of jurisdiction to hold the hearing. department staff shall schedule rescission hearings as follows:

(a) New Commitment. If the prosecution terminates in a sentence to state prison prior to the scheduled rescission hearing, the rescission hearing shall be cancelled, and the prisoner shall be scheduled for a parole hearing as provided in section 2308(c).

If the prosecution terminates in a sentence to state prison after a rescission hearing, the action at the rescission hearing shall be vacated, and the prisoner shall be scheduled for a parole hearing as provided in section 2308(c).

(b) Definitions.

(1) Days. Time must be computed in calendar days. If a due date falls on a weekend or holiday, the due date will be the next working day.

(2) Termination of Criminal Prosecution. Criminal prosecution shall be considered terminated when any one or more of the following occur:

- (A) The prisoner has been sentenced.
- (B) The criminal charges are dismissed for any reason.
- (C) The prisoner has been acquitted.
- (D) The prisoner has been granted immunity from further prosecution.

(E) The prisoner is diverted under Penal Code section 1000.

(F) The prisoner is committed to the department for diagnosis under Penal Code section 1203.03.

(G) The parolee is committed to CRC.

(3) Sentence. A sentence means a fine, a jail sentence, a prison sentence, a probationary sentence (regardless of whether judgment was entered) or any commitment to any agency for diagnosis or treatment (including a temporary commitment to the Department of Health).

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 1170.2 and 3041, Penal Code.

**HISTORY:**

1. Amendment of subsection (c)(2) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment of subsection (c) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
4. Repealer of subsections (a) and (b) and relettering of subsections (c) and (d) to subsections (a) and (b) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
5. Amendment of section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**Article 2. Hearing Procedures****2465. Prisoner Rights.**

At the rescission hearing, the prisoner shall have the rights specified in §§ 2245-2255, and the following rights:

(a) Notification of the Charges and the Supporting Evidence. The prisoner shall receive a copy of the charges, and any supporting evidence unless designated confidential pursuant to § 2235.

(b) Attorney. A life prisoner has the right to be represented by an attorney at the rescission hearing. If the life prisoner is indigent, an attorney shall be appointed at state expense. An ISL or non-life prisoner has the right to request the assistance of an attorney. (See §§ 2690-2701.)

(c) Witnesses. The prisoner shall have the right to request the presence of evidentiary witnesses at a rescission hearing. The witnesses shall be called unless the hearing panel has specific reason to deny the request. Witnesses shall be screened in accordance with the procedures of § 2668. The prisoner may request subpoenas or subpoenas duces tecum as provided in §§ 2675-2682. If denied, the specific reasons for denial shall be documented and a copy of the document given to the prisoner. During the hearing, the prisoner has the right, under the direction of the hearing panel, to question all witnesses.

(d) Notice of the Hearing. The prisoner shall be provided with notice of the hearing at least 30 days prior to the hearing date.

(e) Record. The record of the hearing shall be a stenographic transcript.



NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.5, 3041.7 and 5076.3, Penal Code; In re Carroll (1978) 80 Cal. App. 3d 22.

#### HISTORY:

1. Amendment of subsection (b) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (b) filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
3. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
4. Amendment of subsection (c) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
5. Amendment of section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).
6. Amendment of section and Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

#### **2466. Pre-Hearing Procedures.**

(a) General. Department staff shall ensure that the board at the central office calendar is notified of all cases which are within 20 days of the release date, and all cases of prisoners with criminal prosecution pending and which are held 90 days past the scheduled release date; final rescission hearings are scheduled; written demands for a final hearing are reported to the board at the central office calendar; the prisoner is advised of his rights; prisoner's requests for witnesses are screened; any necessary witnesses are obtained; all documentary and physical evidence is disclosed, unless designated confidential under section 2235; requests for continuances are decided under section 2253; and the case is otherwise prepared for the hearing as necessary.

Life Prisoner Rescission. At least 30 days before a life prisoner rescission hearing, department staff shall notify the district attorney of the county from which the prisoner was committed for the life offense that a representative of the district attorney's office may attend the hearing. If the prosecutor wishes to participate in the hearing, he shall notify the institution hearing coordinator at least 14 days before the hearing. Department staff shall notify the prisoner's attorney that a prosecutor will attend. The prosecutor may review the prisoner's central file and submit any relevant documents. The prosecutor shall submit any documents at least 14 days before the hearing and the institution hearing coordinator shall ensure that the prisoner and his attorney receive a copy 10 days prior to the hearing. The institution hearing coordinator shall also forward to the prosecutor a copy of all documents provided to the prisoner's attorney.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.7, Penal Code.

#### HISTORY:

1. Amendment filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
2. Certificate of Compliance filed 0-27-78 (Register 78, No. 43).
3. Amendment of section heading, section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

#### **2467. Hearing Procedures.**

(a) Pre-rescission Hearing. The pre-rescission hearing shall be conducted by a deputy commissioner. The deputy commissioner shall decide whether there is probable cause to believe that the prisoner engaged in the conduct charged. Guilt, innocence, or possible punishment are not at issue at this hearing.

(b) Rescission Hearing. The rescission hearing for life prisoners shall be conducted by a panel of three, at least two of whom shall be commissioners. Rescission hearings for ISL prisoners shall be conducted by a panel of two deputy

commissioners. The hearing panel shall decide whether the prisoner engaged in the conduct charged and, if so, what action should be taken. For life prisoners, the rescission hearing may be held in conjunction with a department disciplinary hearing. For ISL prisoners with DSL release dates retroactively calculated, the hearing may be held in conjunction with a department good time credit hearing, but only the ISL date may be rescinded. In such a combined hearing, the board shall make any decision necessary to the rescission portion of the hearing, and the department shall make any decisions necessary to the disciplinary or good time credit portion of the hearing. Both the board and the department may question any witnesses. A rescission hearing may be held without a disciplinary hearing, any time that the rescission charges are not based upon disciplinary charges or that the board at the central office calendar orders an independent hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041, 5075 and 5076.1, Penal Code.

#### HISTORY:

1. Amendment of subsection (b) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (b) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
3. Amendment filed 1-20-88 (Register 88, No. 5).
4. Amendment of section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

#### **2468. Procedures After Dismissal or Not Guilty.**

If the charges against the prisoner are dismissed, or if the prisoner is found not guilty of the charges, the prisoner shall be released on the scheduled release date. If the rescission proceedings result in the prisoner's being overdue for release, the prisoner shall be released immediately.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2932, Penal Code.

#### HISTORY:

1. Amendment of section and new Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

#### **2469. Procedures After Postponement.**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3041.7, and 5076.1, Penal Code.

#### HISTORY:

1. Amendment of subsection (c)(4) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (c)(4) filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
3. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
4. Amendment of subsection (c)(2) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
5. Repealer filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

#### **2470. Procedures After Rescission.**

Within ten days of any board action resulting in the rescission of a parole date, the board shall send the prisoner a written statement setting forth the reasons for the rescission. Life and non-life 1168 prisoners shall also be notified that a parole consideration hearing will be held 12-60 months after the rescission hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code.



**HISTORY:**

1. Amendment of subsection (b)(3) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 7-21-78 as an emergency; effective upon filing (Register 78, No. 29).
3. Certificate of Compliance filed 10-27-78 (Register 78, No. 43).
4. Amendment of section and Note filed 12-20-93; operative 1-19-94 (Register 93, No. 52).
5. Amendment filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2471. Appeals.**

(a) Combined Hearing. If the hearing at which the parole date was postponed or rescinded was a combined hearing, the prisoner may appeal the decision under department appeals procedures. The department chief, appeals section, shall coordinate the appeal with the second level of appeal of the board.

(b) No Combined Hearing. If the hearing at which the release date was postponed or rescinded was not a combined hearing, the prisoner may appeal under the procedures of sections 2050-2056.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code  
Reference: In re Muszalski, 52 Cal.App.3d 500 (1975).

**HISTORY:**

1. Amendment of subsection (b) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (b) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
3. Amendment of section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2472. Pre-1948 Credits.**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 2920-2926, Penal Code.

**HISTORY:**

1. Amendment filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
2. Repealer filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

## Article 3. Multi-Jurisdiction Regulations

**2479. General.**

The rules contained in Chapter 4, Articles 1 and 2, shall apply to all multi-jurisdiction prisoners unless modified by the rules in this article. The board at the central office calendar shall determine as specified in section 2367(d) whether the multi-jurisdiction prisoner located outside California shall receive a telephone hearing or a hearing conducted in the incarcerating jurisdiction.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code  
Reference: Sections 1389.7 and 11193, Penal Code.

**HISTORY:**

1. Amendment of article heading and section and new Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2480. Pre-Rescission Hearing Procedures.**

(a) Multi-jurisdiction Prisoners Located in California. Pre-rescission hearings for multi-jurisdiction prisoners located in California shall be conducted as specified in section 2467(a).

(b) Multi-jurisdiction Prisoners Located Outside California. Pre-rescission hearings for multi-jurisdiction prisoners located outside California shall be one of the following:

(1) Telephone Hearing. The pre-rescission hearing shall be conducted by a deputy commissioner who shall decide whether there is probable cause to believe the prisoner committed the violation charged. Guilt, innocence or possible punishment are not at issue in this hearing.

(2) Hearing Conducted in Incarcerating Jurisdiction. Hearings may be conducted for the board by an official of the incarcerating jurisdiction. The official shall recommend to the board whether there is probable cause to believe the prisoner committed the violation charged. Guilt, innocence or possible punishment are not at issue at this hearing. The official's recommendation and a record of the hearing shall be forwarded to the board at the central office calendar where the final probable cause determination shall be made.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code.  
Reference: Sections 5075, 5076.1 and 11193, Penal Code.

**HISTORY:**

1. Amendment of subsection (b)(1) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
2. Amendment of section heading, section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2481. Rescission Hearing Procedures.**

(a) Multi-jurisdiction Prisoners Located in California. Rescission hearings for multi-jurisdiction prisoners located in California shall be conducted as specified in section 2467(b).

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code.  
Reference: Sections 3041 and 5076.1, Penal Code.

**HISTORY:**

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (b)(1) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
3. Repealer of subsections (b)(1) and (b)(2) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
4. Amendment of section heading, section and Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

**2482. Prisoner Rights.**

(a) Multi-jurisdiction Prisoners Located in California. At any pre-rescission or rescission hearing the multi-jurisdiction prisoner located in California shall have the rights specified in section 2465.

(b) Multi-jurisdiction Prisoners Located Outside California.

(1) Multi-jurisdiction Prisoners Receiving Telephone Hearings. At a pre-rescission or rescission telephone hearing the multi-jurisdiction prisoner located outside California shall have the rights specified in section 2367, and the following rights:

(A) Notification of the Charges and the Supporting Evidence. The prisoner is entitled to receive a copy of the charges and the supporting evidence. (See section 2465(a).)

(B) Witnesses. The prisoner shall have the right to request the presence of witnesses. (See section 2465(c).)

(C) Notice of the Hearing. Notice of the hearing shall be given as soon as possible but no later than two weeks before the hearing.

(D) Record.



1. The record of the hearing for a life prisoner shall be a verbatim transcript.

2. The record of the hearing for a non-life 1168 or ISL prisoner shall be a tape recording.

(2) Multi-jurisdiction Prisoners Receiving Hearings in Incarcerating Jurisdictions. At any pre-rescission or rescission hearing held in the incarcerating jurisdiction the multi-jurisdiction prisoner shall have the rights specified in section 2465.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.5 and 3041.7, Penal Code.

#### HISTORY:

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of section and new Note filed 1-13-2000; operative 2-12-2000 (Register 2000, No. 2).

#### **2483. Postponement Review Hearing (Section 2469).**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041.5 and 3041.7, Penal Code.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (a) filed 5-1-80; effective thirtieth day thereafter.
3. Repealer filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### **2484. Postponement Review Hearing: Prisoner's Rights.**

#### HISTORY:

1. Repealer filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

#### **2485. Rescission Rehearing: Prisoner Rights.**

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3041.7, Penal Code.

#### HISTORY:

1. Amendment of subsection (b)(2) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Repealer of Section 2485 and renumbering of Section 2486 to Section 2485 filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18). For history of former section see Register 77, No. 44.
3. Repealer filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).

## CHAPTER 5. PAROLE SUPERVISION

### Article 1. Length and Conditions of Parole

#### **2510. General.**

The prisoner shall be informed of the length and conditions of parole. The board shall establish and impose the special parole conditions and the length of parole within the statutory maximum for all life prisoners, nonlife 1168 prisoners, and ISL prisoners released on ISL parole dates. Under guidelines specified by the board the department shall establish and impose the special conditions of parole and the length of parole within the statutory maximum for all DSL prisoners and ISL prisoners released on DSL release dates as retroactively calculated. The department shall impose any special conditions recommended by the board for DSL prisoners and ISL prisoners released on DSL release dates.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3000, 3052 and 3053, Penal Code.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment of section heading, section and Note filed 5-1-2006 as an emergency; operative 5-1-2006 (Register 2006, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2006 or emergency language will be repealed by operation of law on the following day.
4. Reinstatement of section as it existed prior to 5-1-2006 emergency amendment by operation of Government Code section 11346.1(f) (Register 2006, No. 43).

#### **2511. Notice of Parole.**

(a) Definition. The notice of parole is a general description of rules and regulations governing parolees.

(b) Notice. The notice parole shall read as follows:

1. Release. You will be released on parole effective \_\_\_\_\_ for a period of \_\_\_\_\_. This parole is subject to the following notice and conditions. Should you violate any conditions of this parole, you are subject to arrest and the board may modify, suspend, or revoke your parole and/or order your return to custody. You have read or have had read to you these conditions of parole and you fully understand them. Whenever any problems arise or you do not understand what is expected of you, talk to your parole agent.

2. Extradition. You waive extradition to the State of California from any State or Territory of the United States, or from the District of Columbia. You will not contest any effort to return you to the State of California.

3. Psychiatric Returns. If the board determines that you suffer from a mental disorder which substantially impairs your ability to maintain yourself in the community or which makes you a danger to yourself or others, the board may order your placement in a community treatment facility or state prison, if necessary for treatment. The board may revoke your parole and order you returned to prison for psychiatric treatment if the necessary treatment cannot be provided in the community.

4. Search. You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer.

5. Detainer. If another jurisdiction has lodged a detainer against you, you may be released to the custody of that jurisdiction. Should you be released from their custody prior to the expiration of your California parole, or should the detainer not be exercised, you are to immediately contact the nearest Department of Corrections' Parole and Community Services Division Office for instructions concerning reporting to a parole agent.

6. Residence. The establishment and maintenance of a residence upon release from prison is critical to the successful reintegration of a parolee into society and is in the interest of the public.

7. Certificate of Rehabilitation. You have been informed and have received in writing the procedure for obtaining a Certificate of Rehabilitation.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3053, 3056, 3057 and 3060, Penal Code.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (b)3. filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).



3. Amendment of subsection (b)3. filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
4. New subsection (b)6. and renumbering filed 1-16-92; operative 2-17-92 (Register 92, No. 12).
5. Amendment of section heading, section and Note filed 5-1-2006 as an emergency; operative 5-1-2006 (Register 2006, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2006 or emergency language will be repealed by operation of law on the following day.
6. Reinstatement of section as it existed prior to 5-1-2006 emergency amendment by operation of Government Code section 11346.1(f) (Register 2006, No. 43).

#### **2512. General Conditions of Parole.**

(a) The parole conditions are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions. A violation of any of these conditions of parole may result in the revocation of parole and the parolee's return to prison. The general conditions of parole shall read as follows:

“(1) Special conditions. Any special condition imposed by the department or the board.

(2) Release, Reporting, Residence and Travel. Unless other arrangements are approved in writing, you will report to your parole agent within 24 hours or the next working day if released on the day before a holiday or weekend. Your residence and any change of residence shall be reported to your parole agent in advance. You will inform your parole agent within 72 hours of any change of employment location, employer or termination of employment.

(3) Parole Agent Instructions. You shall comply with all instructions of your parole agent and will not travel more than 50 miles from your residence without his/her prior approval. You will not be absent from your county of residence for a period of more than 48 hours and not leave the State of California without prior written approval of your parole agent.

(4) Criminal Conduct. You shall not engage in criminal conduct. You shall immediately inform your parole agent if you are arrested for a felony or misdemeanor under federal, state, or county law.

(5) Weapons. You shall not own, use, have access to, or have under your control: (a) any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm; (b) any weapon as defined in state or federal statutes or listed in California Penal Code Section 12020 or any instrument or device which a reasonable person would believe to be capable of being used as a weapon; or (c) any knife with a blade longer than two inches, except kitchen knives which must be kept in your residence and knives related to your employment which may be used and carried only in connection with your employment; or (d) a crossbow of any kind.

(6) You shall sign the parole agreement containing the conditions of parole specified in this section and any special conditions imposed as specified in section 2513.”

NOTE: Authority cited: Sections 3000, 3052 and 5076.2, Penal Code; and *Morrissey v. Brewer*, 408 U.S. 471 (1972). Reference: Sections 3052, 3053, 3060.5 and 12020, Penal Code.

#### **HISTORY:**

1. Amendment filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
2. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
3. Amendment filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).

4. Amendment filed 6-14-84; effective thirtieth day thereafter (Register 84, No. 24).
5. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
6. Amendment filed 3-11-87; effective thirtieth day thereafter (Register 87, No. 11).
7. Amendment of section filed 8-15-91; operative 9-16-91 (Register 91, No. 51).
8. Amendment of subsection (a)(2) filed 1-16-92; operative 2-17-92 (Register 92, No. 12).
9. Amendment of subsection (a)(4) and Note filed 9-23-96; operative 10-23-96 (Register 96, No. 39).
10. Change without regulatory effect amending subsection (a)(5) filed 5-21-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 21).
11. Repealer and new section and amendment of Note filed 5-1-2006 as an emergency; operative 5-1-2006 (Register 2006, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2006 or emergency language will be repealed by operation of law on the following day.
12. Editorial correction restoring inadvertently omitted introductory paragraph (Register 2006, No. 36).
13. Reinstatement of section as it existed prior to 5-1-2006 emergency amendment by operation of Government Code section 11346.1(f) (Register 2006, No. 43).

#### **2513. Special Conditions of Parole.**

Special conditions may be established and imposed by the department or the board as provided in section 2510, and are in addition to the general conditions of parole. Special conditions include:

(a) “To participate in Psychiatric Treatment. You agree to participate in the psychiatric treatment program approved for you by the Parole and Community Services Division.” This special condition shall be imposed whenever the board, or the department psychiatric staff, have determined that treatment is required for successful adjustment on parole.

(b) “To abstain from Alcoholic Beverages. You agree to totally abstain from the use of any alcoholic beverages or liquors.” This special condition shall be imposed whenever the circumstances of the commitment offense are such that this condition is required by the provision of Penal Code section 3053.5. This special condition may also be imposed whenever the board or the department determines that such a condition is warranted by the circumstances of the case.

(c) “To Participate in Anti-Narcotic Testing. You agree to participate in anti-narcotic testing in accordance with instructions from a parole agent.” This special condition may be imposed if there is a documented or admitted history of controlled substances usage.

(d) “Residence. You shall maintain a residence with a street address or a dwelling location approved in writing by the Parole and Community Services Division.” This special condition shall be imposed on all parolees required to register under the provisions of Penal Code sections 290 and 457.1, and Health and Safety Code section 11590.

(e) “Gang Participation. You will not actively participate in, promote, further or assist in any prison gang, disruptive group, or criminal street gang activity as enumerated in Penal Code section 186.22(e), nor violate any gang abatement injunction, ordinance, or court order. You will not associate with any prison gang, disruptive group, or street gang member, nor wear or carry on your person, gang colors or any sign, symbol, or paraphernalia associated with gang activity.” These special conditions may be imposed if there is a history of street gang, disruptive group, or prison gang membership, affiliation, or association.



As used in Title 15, Division 2, a disruptive group is defined as any gang other than a prison gang; a prison gang is defined as any gang which originated and has its roots within the department or any other prison system; and a criminal street gang is defined as any formal or informal organization, association, or group of three or more persons having as one of its primary activities the commission of a criminal act enumerated in Penal Code section 186.22(e), or planning, organizing, threatening, financing, or soliciting such acts. A gang is also defined as a group having a common identifying sign or symbol, whose members individually or collectively engage in, or have engaged in, repetitive or escalating non-criminal activities which the board determines to be a threat to public safety.

Only those gang tattoos received prior to parole are not considered to be a violation of this special condition.

(f) A special condition of parole which requires the parolee to participate in a residential program shall not be imposed without a Special Condition/Placement Hearing by the board conducted in accordance with due process as defined in revocation procedures, Title 15, Division 2, Chapter 6, Article 3.

(1) A parolee with parole revocation charges shall have the review for special condition/placement conducted concurrently with the revocation hearing.

(2) A parolee without parole revocation charges shall be afforded appropriate notification per § 2643 prior to the special condition/placement hearing.

(3) Waiver. A parolee may waive his right to a board hearing pursuant to § 2641. If the parolee waives his right to a board hearing, the board, upon receipt of notification, may impose the special condition of parole that the parolee must participate in the residential program up to the statutory maximum (see § 2515).

(g) Other. Any other condition deemed necessary by the board or the department due to unusual circumstances. This special condition shall be imposed whenever warranted by unusual circumstances. The reasons for its imposition shall be sufficiently documented in the parolee's case records to explain the need for imposition.

NOTE: Authority cited: Sections 3052, 3068 and 5076.2, Penal Code. Reference: Sections 186.22, 290, 457.1, 3052, 3053, 3053.2, and 3053.5, Penal Code; and Section 11590, Health and Safety Code.

#### HISTORY:

1. Amendment of section title 10.27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Repealer of subsection (d) and subsection relettering filed 8-15-91; operative 9-16-91 (Register 91, No. 51).
3. Amendment of subsection (d), and renumbering and amendment of NOTE filed 1-16-92; operative 2-17-92 (Register 92, No. 12).
4. Amendment of subsection (d), new subsection (e), subsection relettering, and amendment of NOTE filed 9-5-97 as an emergency; operative 9-5-97 (Register 97, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-5-98 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 9-5-97 order, including additional amendment of subsection (a), transmitted to OAL 12-17-97 and filed 2-2-98 (Register 98, No. 6).
6. New subsections (f)-(f)(3), subsection relettering, amendment of newly designated subsection (g), and amendment of Note filed 2-16-99 as an emergency; operative 2-16-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-16-99 or emergency language will be repealed by operation of law on the following day.
7. Certificate of Compliance as to 2-16-99 order transmitted to OAL 5-17-99 and filed 6-15-99 (Register 99, No. 25).

8. Change without regulatory effect amending subsection (e) filed 6-28-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).
9. Amendment of section heading, section and Note filed 5-1-2006 as an emergency; operative 5-1-2006 (Register 2006, No. 18). A Certificate of Compliance must be transmitted to OAL by 8-29-2006 or emergency language will be repealed by operation of law on the following day.
10. Editorial correction of subsection (c)(2) (Register 2006, No. 36).
11. Reinstatement of section as it existed prior to 5-1-2006 emergency amendment by operation of Government Code section 11346.1(f) (Register 2006, No. 43).

#### **2513.1. Special Conditions of Parole for Sex Offenders Undergoing Chemical Treatment.**

If an individual is undergoing chemical hormone treatment pursuant to Penal Code section 645, the board shall require, and the department shall institute, the following special condition:

“Sex Offender Chemical Treatment. Pursuant to court order, you shall undergo the medroxyprogesterone acetate (or its chemical equivalent) treatment program approved for you by the Department.”

NOTE: Authority cited: Sections 3052 and 5076.1, Penal Code. Reference: Section 645, Penal Code.

#### HISTORY:

1. New section filed 10-13-98; operative 11-12-98 (Register 98, No. 42).

#### **2513.2. Hearings for Sex Offenders Undergoing Chemical Treatment.**

Any sex offender convicted and sentenced under Penal Code section 645 shall begin medroxyprogesterone acetate (or its chemical equivalent) treatment one week prior to release from confinement in the state prison or other institution and shall continue treatments until the department demonstrates to the board that treatment is no longer necessary.

(a) If the department determines that the parolee's medical condition requires the termination of the treatment, the department will immediately transmit a written notification from a medical doctor so stating to the chairman or the executive officer of the board. The chairman or the executive officer shall issue a temporary order to discontinue the treatment pending a parole revocation hearing.

(b) If the department determines that treatment is no longer necessary, the department shall send written notification to the board. The board will thereafter hold a hearing before a commissioner or deputy commissioner to determine whether the department has demonstrated that treatment is no longer necessary.

NOTE: Authority cited: Sections 3052 and 5076.1, Penal Code. Reference: Section 645, Penal Code.

#### HISTORY:

1. New section filed 10-13-98; operative 11-12-98 (Register 98, No. 42).

#### **2514. Waiver of Parole.**

The board may, for good cause, waive parole and discharge any prisoner. An 1170 prisoner or the department may request waiver of parole under the procedures of Sections 2525-2526.

A prisoner whose parole date was set by the board and who desires a waiver shall request a waiver of parole to the hearing panel at the time of the board action setting or modifying the parole date.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3000, Penal Code.

#### HISTORY:

1. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

#### **2515. Length of Parole.**

(a) General. The department shall establish the length of parole for ISL prisoners released on retroactively calculated DSL release dates and for DSL prisoners. The board shall establish the length of parole for ISL prisoners released on ISL parole dates, non-life 1168 prisoners and life prisoners. The board may waive parole for any prisoner and may review, upon request, the length of parole set by the department (see section 2525-section 2526).

The board shall discharge a prisoner who has a 3-year period of parole within 30 days following 1 year on continuous parole, unless the board finds good cause to retain the parolee on parole. The board shall discharge a parolee who has a 5-year period of parole within 30 days following 3 years on continuous parole, unless the board finds good cause to retain the parolee on parole. A parolee has been on continuous parole if he/she has not absconded parole supervision or had parole revoked since initial release on parole. Any time during which the parolee has absconded from supervision while on parole or during a period of revocation shall not be credited to the period of parole.

The parole period may be extended pursuant to revocation proceedings. The parole period shall be extended for an amount of time equal to that ordered as the revocation period. The extension of the period of parole pursuant to revocation shall not exceed the maximum period of parole.

(b) DSL and Non-life 1168 Prisoners: Offenses After January 1, 1979. A DSL or non-life 1168 prisoner who was sentenced to state prison for an offense committed on or after January 1, 1979, is subject to a 3-year parole period, unless the board or the department sets a shorter period of parole. The maximum period of parole is four years.

(c) ISL, DSL and Non-life 1168 Prisoners: Offenses On or Before December 31, 1978. An ISL, DSL or non-life 1168 prisoner who was sentenced to prison for an offense committed on or before December 31, 1978, is subject to a 1-year parole period, unless the board or the department sets a shorter period of parole. The maximum period of parole is 18 months.

(d) Life Prisoners: Offenses After January 1, 1979. A life prisoner who was sentenced to state prison for an offense committed on or after January 1, 1979, is subject to a 5-year parole period, unless the board sets a shorter period of parole. The maximum period of parole is 7 years.

(e) Life Prisoners: Offenses On or Before December 31, 1978. A life prisoner sentenced to state prison for an offense committed on or before December 31, 1978, is subject to a three-year parole period, unless the board sets a shorter period of parole. The maximum period of parole is 4 years.

(f) Life Prisoners: Murder offense on or after January 1, 1983. A life prisoner who was sentenced to prison for a murder committed on or after January 1, 1983, is subject to a parole period of life.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3000.1, 3001, 3002, Penal Code (Stats. 1978, c. 582) and 3064, Penal Code; In re Thompson (1980) 104 Cal.App.3d 950; In re Harper (1979) 96 Cal.App.3d 138; and In re Carr (1995) 38 Cal.App.4th 209.

#### HISTORY:

1. Amendment filed 12-29-78 as an emergency; effective upon filing (Register 78, No. 52).

2. Certificate of Non-compliance reinstating section as it existed prior to emergency amendment transmitted to OAH 3-14-79 and filed 3-20-79 (Register 79, No. 11).
3. Amendment filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
4. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).
5. Amendment of subsections (b) and (c) and new subsections (d), (e) and (f) filed 6-1-79 as an emergency; effective upon filing (Register 79, No. 22).
6. Certificate of Compliance filed 9-26-79 (Register 79, No. 39).
7. Amendment of subsection (a) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
8. Amendment filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
9. New subsection (f) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
10. Amendment of subsections (a)-(c) and amendment of Note filed 10-22-98 as an emergency; operative 10-22-98 (Register 98, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-19-99 or emergency language will be repealed by operation of law on the following day.
11. Certificate of Compliance as to 10-22-98 order transmitted to OAL 1-5-99 and filed 2-10-99 (Register 99, No. 7).

## Article 2. Reconsideration of Length and Conditions of Parole

#### **2525. General.**

For prisoners whose length and conditions of parole were imposed by the board, reconsideration of the length and conditions as originally imposed or later modified shall be by appeal as provided in Sections 2050-2056. For prisoners whose length and conditions of parole were imposed by the department, reconsideration of the length and conditions as originally imposed or later modified shall be as provided in this article.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3000 and 5077, Penal Code.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Repealer of Article 2 (Sections 2525-2528) and new Article 2 (Sections 2525-2526) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

#### **2526. Procedure.**

Prisoners whose length and conditions of parole were established by the department shall first appeal through department appeal procedures (Title 15, California Administrative Code, Section 3003). When the department appeal is final, the prisoner may request board review by following the procedures in Sections 2050-2056.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3000 and 5077, Penal Code.

#### **2528. Right of Appeal.**

A prisoner or parolee objecting to the decision after reconsideration may appeal the decision under the procedures of Section 2050-2057.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).



## Article 3. Discharge

### 2535. Discharge Review.

(a) General. At the discharge review the board shall consider the parolee's adjustment in prison and on parole and any other information relevant to determining whether the parolee should be discharged or retained under parole supervision.

(b) Scheduling.

(1) Three-Year Parolees. The review for those parolees who are subject to a three-year parole period as provided in § 2515(b) shall be performed during the thirteenth month of continuous parole, except for those who were committed for violent felonies as listed in Penal Code section 667.5(c), in which case the review shall be performed during the twenty-fifth month of continuous parole.

(2) Five-Year Parolees. This review shall be performed during the 37th month of continuous parole for parolees subject to a 5-year parole period as provided in Section 2515(d).

(3) Life Parolees. This review shall be performed during the 85th month of continuous parole for first degree murder parolees and during the 61st month of continuous parole for second degree murder parolees.

(4) Continuous Parole. A parolee has been on continuous parole if the parolee has not absconded parole supervision or had parole revoked since initial release on parole. A parolee has not been on continuous parole if he/she has been ordered returned to custody for psychiatric attention. A return to custody period for psychiatric attention which is added to the parole period shall change the parolee's discharge review date, but shall not affect the parolee's controlling discharge date.

(5) One- and Three-Year Parolees. Parolees who were sentenced to prison for offenses committed on or after July 1, 1977, but on or before December 31, 1978, shall not be scheduled for discharge review hearings. These parolees will discharge after one or three years on parole or at the expiration of the maximum period of parole (see section 2515(c) and (e)).

(c) Prisoner Rights. The prisoner does not have a right to a personal appearance during the review. The parolee shall receive a copy of the board's decision, including the reasons for a decision not to discharge the parolee. The parolee may appeal a refusal to discharge as provided in sections 2050-section 2056.

If the board does not discharge the parolee, the board shall review the case annually thereafter until discharge. Subsequent reviews shall be performed as provided in this section.

(d) Criteria. Factors tending to indicate there is good cause to retain a parolee on parole include:

(1) Commitment Offense. The parolee was committed to prison for several offenses, for an offense involving weapons or great bodily harm, for an offense which was part of large scale criminal activity or for an offense which caused considerable concern in the local community.

(2) Institutional Adjustment. While in prison the parolee was involved in serious gang activities or in general acts of violence.

(3) Parole Adjustment. While on parole the parolee has been involved in criminal activity even if that activity did not result in revocation of parole, has been using drugs, has been involved in gang activities, is currently undergoing criminal prosecution or is being investigated for possible prosecution. For parolees whose commitment offense is described in Penal Code section 1192.7(c), engaging in any criminal conduct or other conduct described in section 2616(a) or (b) at any time while on parole shall be deemed good cause to retain that parolee on parole. For any parolee, engaging in any conduct described in section 2616(a) at any time while on parole shall be deemed good cause to retain the parolee on parole.

(4) Placement Returns. The parolee has been returned to custody for controlled substance or psychiatric treatment.

(5) Supervision Needed. The parolee is in special need of continued supervision for the safety of the parolee or of the public.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000.1, 3001, Penal Code (Stats. 1978, c. 582 and Stats. 1982, c. 1406); In re Carr (1995) 38 Cal.App.4th 209.

#### HISTORY:

1. Repealer of Article 3 (Sections 2535-2536) and new Article 3 (Sections 2535-2537) filed 12-29-78 as an emergency; effective upon filing (Register 78, No. 52). For prior history, see Registers 78, No. 14 and 77, No. 44.
2. Certificate of Non-compliance reinstating Article 3 as it existed prior to emergency repealer transmitted to AH 3-14-79 and filed 3-20-79 (Register 79, No. 11).
3. Repealer of Article 3 (Sections 2535-2536) and new Article 3 (Sections 2535-2536) filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
4. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).
5. Amendment of subsection (c) filed 6-1-79 as an emergency; effective upon filing (Register 79, No. 22).
6. Certificate of Compliance filed 9-26-79 (Register 79, No. 39).
7. Amendment of subsection (d) filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).
8. Repealer of subsection (b) and relettering of subsections (c)-(e) to subsections (b)-(d) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
9. Amendment of subsection (b) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
10. Amendment of subsection (b) filed 1-20-88; operative 2-19-88 (Register 88, No. 5).
11. Amendment of subsections (b)(1) and (d)(3) and Note filed 9-23-96; operative 10-23-96 (Register 96, No. 39).
12. Amendment of section and Note filed 10-22-98 as an emergency; operative 10-22-98 (Register 98, No. 43). A Certificate of Compliance must be transmitted to OAL by 2-19-99 or emergency language will be repealed by operation of law on the following day.
13. Certificate of Compliance as to 10-22-98 order transmitted to OAL 1-5-99 and filed 2-10-99 (Register 99, No. 7).

### 2536. Early Discharge.

A prisoner or parolee may request a period of parole shorter than the period of parole specified in section 2515. If the board sets the length of parole, the prisoner or parolee may request a shorter period of parole at a parole consideration or revocation hearing. If the department sets the length of parole, the prisoner or parolee may request a shorter period of parole from the department and may request subsequent review by the board (see Sections 2525-2526). The board may grant an early discharge upon its own motion.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3000, Penal Code (Stats. 1978, c. 582).

#### HISTORY:

1. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).
2. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

### 2536.1. Review of Parole Discharge Recommendation After 180 Days of Parole Supervision. [Repealed]

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076, Penal Code. Reference: Section 3000, Penal Code



**HISTORY:**

1. New section filed 10-9-2007 as an emergency; operative 10-9-2007 (Register 2007, No. 41). A Certificate of Compliance must be transmitted to OAL by 4-7-2008 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-27-2008 as an emergency; operative 3-27-2008 (Register 2008, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-25-2008 or emergency language will be repealed by operation of law on the following day.
3. Repealed by operation of Government Code section 11346.1(g) (Register 2008, No. 39).

**2537. Statutory Discharge.**

If a parolee has not been discharged under Section 2535 or 2536, the parolee shall discharge after serving the maximum period of parole specified in Section 2515.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3000, Penal Code.

**HISTORY:**

1. New section filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).

## Article 4. Multijurisdictional Regulations

**2545. Conditions of Parole.**

(a) Concurrent Parolees. All concurrent an California concurrent parolees may also have parole conditions established by the authorities of the incarcerating jurisdictions in addition to the California Notice and Conditions. Only the authorities of the incarcerating jurisdiction can modify the parole conditions they have established for concurrent and California concurrent parolees.

(b) Cooperative Parolees. Cooperative parolees shall be supervised in the receiving state by the authorities of the receiving state according to the same standards which prevail for its own parolees.

**HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

**2546. Reconsideration of Length and Conditions of Parole.**

(a) Board Established Length and Conditions of Parole. For multijurisdiction prisoners and multijurisdiction parolees whose length and conditions of parole were set by the board, reconsideration shall be by appeal as provided in Sections 2073-2075. For multijurisdiction prisoners who are released to supervision in a California community, reconsideration shall be by appeal as provided in Sections 2050-2056.

(b) Department Established Length and Conditions of Parole. Multijurisdiction prisoners and parolees whose length and conditions of parole were set by the department must first appeal the department's decision through the department appeal process (See Title 15, California Administrative Code, Section 3003). The board will not consider the request until the department appeal is final. When the department appeal is final the prisoner may request board reconsideration of the department established length and conditions of parole. For multijurisdiction prisoners who are released to supervision in California community, board reconsideration of a department set length and conditions of parole shall be as specified in Sections 2525-2526.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5077, Penal Code.

**HISTORY:**

1. Amendment of subsection (a) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

**2547. Filing the Request for Reconsideration.**

The multijurisdiction prisoner or parolee must file the request for reconsideration within 30 days of notice of the department's final decision. The request shall be prepared as specified in Section 2526.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5077, Penal Code.

**HISTORY:**

1. Amendment filed 12-28-79 as procedural and organizational; designated effective 1-1-80 (Register 79, No. 52).

**2548. Submitting the Request.**

The multijurisdiction prisoner or parolee shall submit the request to the person responsible for the prisoner's or parolee's first level of appeal as provided in section 2074. Department staff shall log the appropriate information when the request is received. This information shall include the name and number of the person filing the request, the date the request was received, and the date the request was forwarded to the board.

**2549. Right to Appeal.**

A multijurisdiction prisoner or parolee objecting to the decision on reconsideration may appeal the decision as provided in Sections 2074-2075.

## Article 5. Mentally Disordered Offender Certification and Hearing Procedures

**2570. Terminology.**

For the purposes of this article the following terms mean:

(a) Certification Hearing: A hearing conducted by the board for the purpose of determining whether or not a prisoner meets the criteria to be treated as a mentally disordered offender pursuant to Penal Code section 2962.

(b) Independent Professional: Psychiatrists and Licensed Psychologists with a doctoral degree in psychology on lists submitted to the board by Department of Corrections and the State Department of Mental Health.

(c) Inpatient Treatment: Mental health treatment provided in a secure facility of the State Department of Mental Health.

(d) Mentally Disordered Offender: A prisoner who meets the criteria for mental health treatment as a condition of parole pursuant to Penal Code section 2962.

(e) Placement Hearing: A hearing conducted by the board to determine whether a prisoner shall be treated as an inpatient or an outpatient.

(f) Outpatient Treatment: Mental health treatment provided by a local outpatient program specified by the State Department of Mental Health.

(g) Remission: A finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psychosocial support.

(h) "Cannot Be Kept in Remission Without Treatment": A person "cannot be kept in remission without treatment" if during the year prior to the question being before the board or a trial court, he or she has been in remission and he or she has been physically violent, except in self-defense, or he or she has made a serious threat of substantial physical harm upon the person of another so as to



cause the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family, or he or she has intentionally caused property damage, or he or she has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan.

(i) **Serious Bodily Injury:** "Serious Bodily Injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussions; bone fracture; protracted loss or impairment of functions of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(j) **Severe Mental Disorder:** An illness or disease or condition which substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or which demonstrates evidence of an acute brain syndrome for which prompt remission in the absence of treatment is unlikely.

"Severe Mental Disorder" does not include a personality or adjustment disorder, epilepsy, mental retardation or other developmental disabilities, or addiction to or abuse of intoxicating substances.

(k) **Annual Review Hearing.** An annual hearing conducted by the board if the parolee is retained on parole under the provisions of Penal Code section 3001 to determine whether the parolee continues to meet the criteria set forth in Penal Code section 2962; and if the parolee is still an inpatient, whether he or she shall be treated as an inpatient or outpatient.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 243, 2962, 2964, 2966, 2978(a) and 3001, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. New subsection (k) and amendments to reference citation filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

#### **2571. Criteria for Certification as Mentally Disordered Offender.**

As a condition of parole, a prisoner who meets the following specified criteria shall be required to be treated by the State Department of Mental Health and the State Department of Mental Health shall provide the necessary treatment:

- (a) The prisoner has a severe mental disorder.
- (b) The mental disorder is not in remission, or cannot be kept in remission without treatment.
- (c) The severe mental disorder was one of the causes of or was an aggravating factor in the commission of a crime for which the prisoner was sentenced to prison.
- (d) The crime referred to in section 2571, subdivision (c), for which the prisoner was sentenced to prison, must have been a crime in which the prisoner used force or violence, or caused serious bodily injury, and must have occurred on or after January 1, 1986.
- (e) The prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to the prisoner's parole or release.
- (f) The prisoner represents a substantial danger of physical harm to others by reason of his or her severe mental disorder. Substantial danger of physical harm does not require proof of a recent overt act.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2962 and 2980, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of subsections (e) and new subsection (f) and amendments to reference citations filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

#### **2572. Certification.**

(a) Prior to release on parole, or imposition of a special condition of mental health treatment under the provisions of Penal Code sections 2960 through 2980, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Mental Health shall evaluate the prisoner at a facility of the Department of Corrections, and a chief psychiatrist of the Department of Corrections shall certify to the board that the prisoner has a severe mental disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental disorder for 90 days or more within the year prior to his or her parole release day, and that the prisoner used force or violence or caused serious bodily injury in committing the crime referred to in section 2571, the crime occurred on or after January 1, 1986, and that by reason of his or her severe mental disorder, the prisoner represents a substantial danger of physical harm to others.

(b) The certification shall contain a clear statement that the prisoner does or does not meet the criteria of Penal Code section 2962 and all supporting documentation leading to the conclusion shall be attached.

(c) The certification evaluations shall be conducted at a facility of the Department of Corrections or the State Department of Mental Health by the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of Mental Health or Department of Corrections. A chief psychiatrist of the Department of Corrections will complete the certification. For prisoners being treated by the State Department of Mental Health pursuant to Penal Code section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections, and the evaluations shall be done at a state hospital by the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2962 and 2980, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of subsections (a) and reference citations filed 2-4-91; operative 3-6-91 (Register 91, No. 11).



**2573. Board of Prison Terms' Review of Certifications.**

(a) The board's central office calendar deputy commissioner shall review the Department of Corrections' certification to the board to ascertain if the psychiatrists or psychologists conducting the evaluation did or did not concur that:

- (1) The prisoner has a severe mental disorder; or
- (2) The disorder is not in remission or cannot be kept in remission without treatment; or
- (3) That the severe mental disorder was a cause of, or aggravated the prisoner's criminal behavior.

The deputy commissioner shall also review the supporting documents to ascertain whether or not the conclusions are supported by the facts contained in the supporting documents.

(b) If it is ascertained that there was a difference of opinion concerning any of the above, the board shall appoint two independent psychiatrists or licensed psychologists from the approved lists, provided by the State Department of Mental Health and the Department of Corrections to evaluate the prisoner to determine if he or she meets the criteria of Penal Code section 2962. Only if both independent professionals concur with the chief psychiatrist's certification, shall the provisions of Penal Code section 2962 be applicable to the prisoner.

Prior to release on parole, the board's central office calendar shall review the certification to determine if the prisoner meets the criteria required for treatment as a mentally disordered offender.

(c) If the board finds that the criteria of Penal Code section 2962 are met it shall order the prisoner's treatment by the State Department of Mental Health as a condition of parole.

(d) The board shall notify the appropriate Department of Corrections Classification and Parole Representative prior to the prisoner's release date that either:

- (1) It has ordered the prisoner be treated by the Department of Mental Health pursuant to Penal Code section 2962, or
- (2) It does not find that the criteria of Penal Code section 2962 are met and the Department of Corrections is to proceed with normal parole procedures.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2962 and 2978, Penal Code.

**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment to reference citations filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

**2574. Notification to Prisoner/Parolee.**

Upon receipt of the board's certification review action by the Classification and Parole Representative, the Department of Corrections staff shall inform the prisoner of the decision. If treatment has been ordered as a condition of parole pursuant to Penal Code section 2962, the prisoner shall be served with conditions of parole which will reflect the special condition of treatment in addition to any others, be informed in writing of the right to request a hearing, and that he/she has the right to request an evaluation by two independent professionals from the approved lists provided by the State Department of Mental Health and the Department of Corrections. If applicable, the prisoner shall also be processed for transfer to a designated State Department of Mental Health facility.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 2966, Penal Code.

**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment to reference citations filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

**2575. Prisoner's Options Following Notification of Special Condition of Parole.**

Upon notification of the board ordered special condition of parole of treatment pursuant to Penal Code section 2962, the prisoner has the following options:

(a) Sign the special condition of parole imposed pursuant to Penal Code section 2962 and be transferred to a State Department of Mental Health facility.

(b) Refuse to sign the special condition of parole imposed pursuant to Penal Code section 2962 and be scheduled for a parole revocation hearing with counsel pursuant to Penal Code section 3060.5.

(c) Sign the special condition of parole imposed pursuant to Penal Code section 2962 and request a certification hearing before the board.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2962 and 3060.5, Penal Code.

**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of subsection (a) and reference citation filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

**2576. Certification Hearing.**

(a) The purpose of a certification hearing is to determine whether or not the prisoner/parolee, in fact, meets the criteria required for treatment by the State Department of Mental Health as a condition of parole as set forth in Penal Code section 2962.

(b) (1) The standard of proof used by the board at this hearing shall be a preponderance of evidence standard.

(2) The burden of proof to establish that the prisoner meets the criteria set forth in Penal Code section 2962 shall be on the person or agency that so certified.

(3) The prisoner/parolee shall have the rights specified in §§ 2245-2256.

(4) An attorney shall be appointed or retained to represent the prisoner or parolee. Attorney waivers will not be accepted.

(5) The prisoner shall be informed that he/she has the right to request an evaluation by two independent professionals from the approved list provided by the State Department of Mental Health and the Department of Corrections. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as defined in Penal Code section 2978.

(6) The record of the hearing shall be a tape recording.

(7) Written Decision. The prisoner and his or her attorney shall receive a copy of the decision specifying the decision, the information considered, and the reasons for the decision.



(8) A prisoner may appeal a certification hearing decision pursuant to § 2050.

(9) The hearing shall be conducted by one deputy commissioner.

(10) The prisoner shall be informed at the hearing of his or her right to request a trial on whether he or she meets the criteria of Penal Code section 2962.

(11) The board shall provide a prisoner who requests a trial a petition form and instructions for filing the petition.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2966 and 2978, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of subsection (b)(5) and reference citation, and new subsection (b)(11) filed 2-4-91; operative 3-6-91 (Register 91, No. 11).
5. Amendment of subsections (b)(3), (b)(8) and (b)(9) filed 6-24-2003 as an emergency; operative 7-1-2003 (Register 2003, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-1-2003 order transmitted to OAL 10-24-2003 and filed 11-7-2003 (Register 2003, No. 45).

#### **2577. Mental Health Treatment Program.**

(a) The mental health treatment required as a condition of parole by the board shall be inpatient unless the State Department of Mental Health certifies to the board that there is reasonable cause to believe the parolee can be safely and effectively treated on an outpatient basis, in which case the board shall permit the State Department of Mental Health to place the parolee in an outpatient program specified by the State Department of Mental Health.

(b) Before deciding to seek revocation of the parole of a parolee receiving mental health treatment pursuant to Penal Code section 2962, and returning the parolee to prison, the parole agent shall consult with the Director of the parolee's outpatient program.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 2964, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment to reference citation filed 2-4-91; operative 3-6-91 (Register 91, No. 11).

#### **2578. Placement Hearings.**

(a) If the State Department of Mental Health has not placed a parolee on outpatient treatment within 60 days after receiving custody of the parolee or after parole is continued pursuant to Penal Code section 3001, the parolee may request a hearing before the board to determine whether he or she shall be treated as an inpatient or an outpatient.

(b)(1) The standard of proof used at this hearing shall be a preponderance of the evidence standard.

(2) The burden of proof shall be on the State Department of Mental Health to establish that the prisoner requires inpatient treatment.

(3) The prisoner/parolee shall have the rights specified in §§ 2245-2256.

(4) An attorney shall be appointed or retained to represent the prisoner or parolee. Attorney waivers will not be accepted.

(5) Parolees shall be informed that they have a right to request evaluations by two independent professionals from the approved list provided by the Department of Corrections and the State Department of Mental Health. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as defined in Penal Code section 2978.

(6) The record of the hearing shall be a tape recording.

(7) Written Decision The parolee and his attorney shall receive a copy of the decision specifying the decision, the information considered and the reasons for the decision.

(8) A parolee may appeal a placement hearing decision pursuant to § 2050.

(9) The hearing shall be conducted by one deputy commissioner.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 2964, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of subsection (b)(4) and reference citation filed 2-4-91; operative 3-6-91 (Register 91, No. 11).
5. Amendment of subsections (b)(3), (b)(8) and (b)(9) filed 6-24-2003 as an emergency; operative 7-1-2003 (Register 2003, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-1-2003 order transmitted to OAL 10-24-2003 and filed 11-7-2003 (Register 2003, No. 45).

#### **2579. Parole Violations.**

Certification for mental health treatment pursuant to Penal Code section 2962 does not eliminate the requirement that P&CSD shall report behavior to the board as specified in section 2616(a), or violation of the board imposed special conditions of parole. This policy applies to parolees on inpatient or outpatient status.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 2962, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of reference citation filed 2-4-91; operative 3-6-91 (Register 91, No. 11).



**2580. Discharge Review and Annual Review Hearings.**

(a) If the P&CSD at the time of the review required by § 2535 recommends that the parolee be retained on parole and to reaffirm the special condition of treatment by the State Department of Mental Health, and the decision of central office calendar is to retain and reaffirm, the parolee is entitled to an annual review hearing conducted under the provisions of subdivision (b) of this section.

(b) The purpose of the hearing is to determine whether:

(1) The parolee has a severe mental disorder. The parolee's severe mental disorder is not in remission or cannot be kept in remission without treatment.

(2) The crime occurred on or after January 1, 1986.

(3) The prisoner represents a substantial danger of physical harm to others by reason of his or her severe mental disorder.

(4) The parolee can be safely and effectively treated on an outpatient basis if the parolee is still being treated as an inpatient.

(c)(1) The standard of proof used by the board at this hearing shall be a preponderance of the evidence standard.

(2) The burden of proof shall be on the State Department of Mental Health to establish that the parolee is not in remission or cannot be kept in remission without treatment and requires further treatment.

(3) The parolee shall have the rights specified in §§ 2245-2256.

(4) An attorney shall be appointed or retained to represent the parolee. Attorney waiver will not be accepted.

(5) The record of the hearing shall be a tape recording.

(6) Parolees shall be informed that they have a right to request evaluation by two independent professionals from the approved list provided by the Department of Corrections and State Department of Mental Health. If the prisoner or any person appearing on his or her behalf at the hearing requests it, the board shall appoint two independent professionals as defined in Penal Code section 2978.

(7) The parolee and attorney shall receive a copy of the decision specifying the decision, the information considered, and the reasons for the decision.

(8) A parolee may appeal the decision pursuant to § 2050.

(9) The hearing shall be conducted by one deputy commissioner.

(10) The parolee shall be informed at the hearing of his or her right to request a trial under the provisions of law.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 2962, 2964, 2966, 2978 and 2980, Penal Code.

**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days of emergency language will be repealed on 4-6-88.
2. Emergency language filed 12-7-87 repealed by operation of Government Code section 11346.1 (Register 88, No. 42).
3. New section filed 10-6-88; operative 10-6-88 (Register 88, No. 42).
4. Amendment of subsections (b) and (c) and reference citations filed 2-4-91; operative 3-6-91 (Register 91, No. 11).
5. Amendment of subsections (a), (b)(1), (b)(3), (b)(8) and (b)(9) filed 6-24-2003 as an emergency; operative 7-1-2003 (Register 2003, No. 26). A Certificate of Compliance must be transmitted to OAL by 10-29-2003 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-1-2003 order transmitted to OAL 10-24-2003 and filed 11-7-2003 (Register 2003, No. 45).

**CHAPTER 6. PAROLE REVOCATION****Article 1. Parole Hold Policy****2600. General.**

A parole agent may impose a parole hold only when the parole agent determines that the parolee falls within the criteria listed in Section 2601, and there is probable cause to believe the parolee has violated parole.

The hold decision must be made in every case regardless of the type of crime or parole violation with which the parolee is charged and regardless of whether another criminal justice agency is detaining the parolee.

A parole agent may place a parole hold on a parolee when he is already confined as the result of a new criminal charge or may arrest a parolee and place him in a local jail facility on a parole hold pending investigation of alleged parole violations.

The fact that a parolee has been released on bail or his own recognizance does not serve as a substitute for the parole agent's decision to place a hold. The board must consider the threat to the community. A case may be presented to the board at the central office calendar for a decision regarding the placement of a parole hold.

An absconder whose parole has been suspended and who has been subsequently apprehended, but who does not require the placement of a parole hold under one of the criteria listed in Section 2601 should be reported to the board at the central office calendar to be reinstated on parole pending further determination, and any outstanding warrants should be recalled.

The primary concern shall be for public safety.

NOTE: Authority cited: Section 3052, Penal Code. Reference: Sections 3000(b)(7) and 3060, Penal Code.

**HISTORY:**

1. New final paragraph and Note filed 9-23-96; operative 10-23-96 (Register 96, No. 39).

**2600.1. Sexually Violent Predator Screening, Holds, and Board Determinations.**

(a) Upon notification from the Division of Adult Institutions, Department of Mental Health, or Board of Parole Hearings (board) staff that either an inmate or parolee in revoked status may or does require a full evaluation pursuant to subdivisions (c) through (i) inclusive of Welfare and Institutions Code section 6601 to determine whether that person may be subject to commitment as a sexually violent predator, the board may order imposition of a temporary hold on the person for up to three working days beyond their scheduled release date pending a good cause determination by the board pursuant to section 6601.3 of the Welfare and Institutions Code where exceptional circumstances preclude an earlier evaluation by the person pursuant to section 6601 of the Welfare and Institutions Code.

(b) Staff shall document that either inmates or parolees in revoked status subject to the temporary hold in subdivision (a) of this section either have been screened or are in the process of being screened as a person likely to be a sexually violent predator pursuant to Welfare and Institutions Code section 6601(b). The good cause determination by the board pursuant to subdivisions (c) and (d) of this section must occur within the time period of the temporary hold.

(c) Board determinations pursuant to Welfare and Institutions Code section 6601.3 shall be conducted by one commissioner or one deputy commissioner.

(d) For purposes of this section, good cause to place a 45-day hold pursuant to Welfare and Institutions Code section 6601.3 exists when either the inmate or parolee in revoked status is found to meet all the following criteria:



(1) Some evidence that the person committed a sexually violent offense by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person on, before, or after January 1, 1996, which resulted in a conviction or a finding of not guilty by reason of insanity of one or more felony violations of the following Penal Code Sections: 261, 262, 264.1, 269, 286, 288, 288(a), 288.5, 289 or any felony violation of sections 207, 209 or 220, committed with the intent to commit a violation of sections 261, 262, 264.1, 286, 288, 288a, or 289. The preceding felony violations must be against one or more victims.

If the victim of one of the felony violations listed above is a child under 14, then it is considered a sexually violent offense.

A prior finding of not guilty by reason of insanity for an offense described in this subdivision, a conviction prior to July 1, 1977 for an offense described in this subdivision, a conviction resulting in a finding that the person was a mentally disordered sex offender, or a conviction in another state for an offense that includes all of the elements of an offense described in this subdivision, shall also be deemed to be a sexually violent offense, even if the offender did not receive a determinate sentence for that prior offense.

(2) Some evidence that the person is likely to engage in sexually violent predatory criminal behavior.

(e) Holds imposed under this section shall start the day following the scheduled release date of the inmate or parolee in revoked status and will terminate no later than the 45th day following the scheduled release date. Holds shall terminate sooner if the person is not referred to the Department of Mental Health as a result of the screening process or upon a determination by the Department of Mental Health that the person is not a sexually violent predator or upon superior court decisions pursuant to Welfare and Institutions Code sections 6601.5 or 6602.

(f) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found no longer to be a sexually violent predator, at which time the period of parole or any remaining portion thereof shall begin to run.

NOTE: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2 Penal Code. Reference: Sections 6600, 6600.1, 6601 and 6001.3, Welfare and Institutions Code; and Section 3000, Penal Code.

#### HISTORY:

1. New section filed 12-26-95 as an emergency; operative 1-1-96 (Register 95, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-30-96 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-26-95 order transmitted to OAL 4-24-96 and filed 6-6-96 (Register 96, No. 23).
3. Amendment of subsections (b)-(c)(3) and (e), new subsection (f) and amendment of Note filed 1-24-97 as an emergency; operative 1-24-97 (Register 97, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-26-97 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 1-24-97 order, including further amendment of subsection (c)(1), transmitted to OAL 4-11-97 and filed 5-15-97 (Register 97, No. 20).
5. Amendment of section heading, section and Note filed 4-18-2007 as an emergency; operative 4-18-2007 (Register 2007, No. 16). A Certificate of Compliance must be transmitted to OAL by 10-15-2007 or emergency language will be repealed by operation of law on the following day.

6. Certificate of Compliance as to 4-18-2007 order, including amendment of subsections (d) and (d)(1), transmitted to OAL 10-15-2007 and filed 11-29-2007 (Register 2007, No. 48).

#### 2601. Criteria for Placement of a Parole Hold.

(a) A parolee suspected of a parole violation may be detained by a parole hold for any of the following reasons:

- (1) He is a danger to himself.
- (2) He is a danger to the person or property of another.
- (3) He may abscond.

(b) In addition, a parole hold may be placed where the parolee is alleged to be a person described in Section 2616(a)(14).

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 3056, Penal Code.

#### HISTORY:

1. Amendment of section title filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
3. Change without regulatory effect amending subsection (b) filed 5-8-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 19).

#### 2602. Factors Considered.

Examples of factors to be considered in deciding whether to place a parole hold include:

- (a) The emotional or mental health of the parolee resulting in the parolee being a danger to self or others, or being unable to adequately take care of himself or herself.
- (b) The presence of drug or alcohol abuse. If drug or alcohol abuse is the only factor warranting a parole hold, the parolee should be placed in jail on a parole hold only when there is no suitable alternative available, such as a hospital or detoxification center with adequate security.
- (c) The seriousness of the alleged parole violation.
- (d) Prior instances of assaultive behavior when the present violation relates to danger to others.
- (e) Involvement in the transportation, sale, or distribution of narcotics or dangerous restricted drugs.
- (f) Present threats of violence.
- (g) Repeated unlawful conduct during the parolee's current parole in contrast to a "one-time" incident.
- (h) Record of escapes from custody or absconding from parole, probation or bail.
- (i) Nomadic geographical pattern of prior arrests.
- (j) Employment history and stability.
- (k) Residential pattern.
- (l) Nature of family and community relationships.
- (m) Necessary psychiatric treatment cannot be obtained in the community.
- (n) Conduct indicating that the parolee's mental condition has deteriorated such that the parolee is likely to engage in future criminal behavior.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code; and Terhune v. Superior Court (Whitley), 65 Cal.App.4th 864. Reference: Section 3056, Penal Code.

#### HISTORY:

1. Amendment of subsection (a) and new subsection (m) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
2. New subsection (n) and amendment of Note filed 8-26-98 as an emergency; operative 8-26-98 (Register 98, No. 35). A



Certificate of Compliance must be transmitted to OAL by 12-24-98 or emergency language will be repealed by operation of law on the following day.

3. Certificate of Compliance as to 8-26-98 order transmitted to OAL 11-5-98 and filed 12-21-98 (Register 98, No. 52).

### **2603. Review of a Parole Hold.**

(a) Initial Review. As soon as possible, but no later than 4 days after the placement of a parole hold, the parole agent must have a case conference with the unit supervisor to determine whether the parole hold should be continued.

(b) Replacing a Parole Hold. Once a parole hold is dropped, it should not be replaced unless new information has been received which indicates that the parolee falls within Section 2601. If the parole hold is replaced, the parolee shall be given the reasons in writing as provided in Section 2604.

(c) Later Removal of a Parole Hold. In appropriate cases, the district administrator may later remove a parole hold.

(d) Board Review. The board is authorized to order a parole hold placed, replaced, or removed at any time. The board decision regarding a parole hold is final. On a semi-annual basis the P&CSD shall provide the board information regarding the use of parole holds.

### **2604. Reasons for Parole Hold.**

In all cases, the parole agent must notify the parolee in writing of the reasons for the hold as soon as possible but no later than 7 days after placement of the parole hold. If the hold has been placed or replaced by the board, the board must notify the parolee in writing of the reasons for the hold. At the time the parolee is notified of the reasons for the parole hold P&CSD staff shall also notify the parolee of his right to appeal the decision and the procedure for filing the appeal.

#### **HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

### **2605. Transfer to Prison.**

Parolees on a parole hold only shall be retained in local custody pending a hearing.

(a) Medical Transfer. When a parolee presents a serious custodial risk and requires medical treatment necessitating hospitalization which cannot be provided locally because of lack of adequate detention facilities the parolee may be returned to prison upon written order of the judge of the superior court as provided in Penal Code section 4007.

(b) Emergency Transfer. A parolee may be returned to prison on an emergency basis if he cannot be physically retained in local custody pending a hearing, as certified in writing by the local detaining agency.

(c) Emergency Transfer: Psychiatric Treatment. A parolee may be returned to prison on an emergency basis if he is alleged to be an individual described in Section 2616(a)(14) and if he or she cannot receive necessary psychiatric treatment pending a hearing, as certified in writing by the P&CSD.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Section 3056, Penal Code.

#### **HISTORY:**

1. New subsection (c) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
2. Change without regulatory effect amending subsection (c) filed 5-8-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 19).

### **2606. Length of Parole Hold.**

(a) Crimes Committed On or Before December 31, 1978. If the crime for which the parolee was committed to prison occurred on or before December 31, 1978, the parole hold shall not remain in effect for longer than six months.

(b) Crimes Committed On or After January 1, 1979. If the crime for which the parolee was committed to prison occurred on or after January 1, 1979, the parole hold shall not remain in effect for longer than one year.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.

#### **HISTORY:**

1. Amendment filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
2. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).

## **Article 2. Parole Violations and Reports**

### **2615. General.**

The board is authorized to revoke parole in any case where the parolee has violated parole. Parole violations listed in section 2616(a) and (b) must be reported to the board. The P&CSD is authorized to dispose of any other parolee misconduct.

NOTE: Authority cited: Section 3052, Penal Code. Reference: Sections 3060 and 3063, Penal Code.

#### **HISTORY:**

1. Amendment of section and new Note filed 9-23-96; operative 10-23-96 (Register 96, No. 39).

### **2616. Reportable Information.**

(a) Behavior Which Must Be Reported. The P&CSD shall report to the board any parolee who is reasonably believed to have engaged in the following kinds of behavior:

(1) Any conduct described in Penal Code section 667.5(c), or any conduct described in Penal Code section 1192.7(c), or any assaultive conduct resulting in serious injury to the victim.

(2) Possession, control, use of, or access to any firearms, explosive or crossbow or possession or use of any weapon as specified in subdivision (a) of California Penal Code section 12020, or any knife having a blade longer than two inches, except as provided in § 2512.

(3) Involvement in fraudulent schemes involving over \$1,000.

(4) Sale, transportation or distribution of any narcotic or other controlled substances as defined in division 10 of the California Health and Safety Code.

(5) A parolee whose whereabouts are unknown and has been unavailable for contact for thirty days.

(6) Any other conduct or pattern of conduct in violation of the conditions of parole deemed sufficiently serious by the P&CSD staff, including repetitive parole violations and escalating criminal conduct.

(7) The refusal to sign any form required by the Department of Justice explaining the duty of the person to register under Penal Code section 290.

(8) The failure to provide two blood specimens, a saliva sample, right thumb print impressions, and full palm print impressions of each hand as provided in Penal Code sections 295 through 300.3, requiring specified offenders to give samples before release.

(9) The failure to register as provided in Penal Code section 290, if the parolee is required to register.

(10) The failure to sign conditions of parole.



(11) Violation of the special condition prohibiting any active participation or assistance in, or promotion or furtherance of, prison gang, disruptive group, or criminal street gang activity, as enumerated in Penal Code section 186.22(e), if such condition was imposed.

(12) Violation of the special condition prohibiting any association with any member of a prison gang, disruptive group or criminal street gang, as defined in § 2513(e), or the wearing or displaying of any gang colors, signs, symbols, or paraphernalia associated with gang activity, if such condition was imposed.

(13) Violation of the special condition requiring compliance with any gang-abatement injunction, ordinance, or court order, if such condition was imposed.

(14) Conduct indicating that the parolee's mental condition has deteriorated such that the parolee is likely to engage in future criminal behavior.

(15) Violation of the residency restrictions set forth in Penal Code section 3003.5 for parolees required to register as provided in Penal Code section 290.

(b) In addition, for any parolee whose commitment offense is described in Penal Code section 1192.7(c), the P&CSD shall report to the board any such parolee who is reasonably believed to have engaged in the following kinds of behavior:

- (1) Any behavior listed in paragraph (a).
- (2) Any criminal conduct
- (3) Any violation of a condition to abstain from alcoholic beverages.

(c) Behavior Which May be Reported. Any conduct which the parole agent, unit supervisor or district administrator feels is sufficiently serious to report, regardless of whether the conduct is being prosecuted in court.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code; and Terhunev.Superior Court (Whitley) (1998) 65 Cal.App.4th 864. Reference: Sections 186.22, 290, 295-300.3, 3000, 3003.5, 3053, 3056, 3057, 3060 and 3060.5, Penal Code; and Sections 11561 and 11563, Health and Safety Code.

#### HISTORY:

1. Amendment of subsection (a)(1) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
3. New subsection (a)(8) filed 12-28-79 as an emergency; designated effective 1-1-80 (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-1-80.
4. Certificate of compliance filed 5-1-80 (Register 80, No. 18).
5. Amendment of subsection (a)(7) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
6. Amendment of subsection (a)(8) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
7. Amendment of section heading and subsection (a)(7) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
8. Amendment filed 9-23-96; operative 10-23-96 (Register 96, No. 39).
9. Amendment of subsections (a)(1), (a)(2), (a)(4), (a)(6) and (a)(10), new subsections (a)(12)-(a)(14), and amendment of subsection (c) and NOTE filed 9-5-97 as an emergency; operative 9-5-97 (Register 97, No. 36). A Certificate of Compliance must be transmitted to OAL by 1-5-98 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 9-5-97 order transmitted to OAL 12-17-97 and filed 2-2-98 (Register 98, No. 6).

11. New subsection (a)(15) and amendment of Note filed 8-26-98 as an emergency; operative 8-26-98 (Register 98, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-24-98 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 8-26-98 order transmitted to OAL 11-5-98 and filed 12-21-98 (Register 98, No. 52).
13. Repealer of subsection (a)(7) and subsection renumbering filed 5-10-99 as an emergency; operative 5-10-99 (Register 99, No. 20). A Certificate of Compliance must be transmitted to OAL by 9-7-99 or emergency language will be repealed by operation of law on the following day.
14. Certificate of Compliance as to 5-10-99 order transmitted to OAL 7-15-99 and filed 8-9-99 (Register 99, No. 33).
15. Change without regulatory effect amending subsections (a)(8) and (a)(11) and amending Note filed 6-28-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).
16. New subsection (a)(15) and amendment of Note filed 6-28-2007 as an emergency; operative 6-28-2007 (Register 2007, No. 26). A Certificate of Compliance must be transmitted to OAL by 12-26-2007 or emergency language will be repealed by operation of law on the following day.
17. Certificate of Compliance as to 6-28-2007 order transmitted to OAL 11-8-2007 and filed 11-29-2007 (Register 2007, No. 48).

#### **2616.1. Reportable Information for Sex Offenders Undergoing Chemical Treatment.**

The department shall report failure to report for or cooperate with scheduled sex offender chemical hormone treatment to the board.

NOTE: Authority cited: Sections 3052 and 5076.1, Penal Code. Reference: Section 645, Penal Code.

#### HISTORY:

1. New section filed 10-13-98; operative 11-12-98 (Register 98, No. 42).

#### **2617. Investigation.**

A parole agent shall investigate all cases of a parolee suspected of a parole violation. All available facts relating to the charged violation shall be documented. If the parolee is suspected of a violation which is being investigated as a new crime by a police agency, the parole agent should obtain a copy of the arresting agency's arrest and investigation report. If the parolee is suspected of a violation which is not being investigated as a new crime by a police agency, the parole agent should interview all persons who have knowledge of the conduct and record their statements.

#### **2618. Parole Violation Report.**

The parole violation report is a document prepared by the parole agent specifying the parole violation charges against a parolee, and containing or referring to the information known to the parole agent relevant to the charges. The parole violation report shall include a resume of the parolee's adjustment to community supervision. Any documents which relate to the parole violation shall be attached to the report or specifically identified in the report.

#### **2619. Supplemental Parole Violation Reports.**

A supplemental parole violation report may be submitted to: report significant new information or evidence which tends to prove or disprove the violations previously charged; note court actions on charges which are being prosecuted in a criminal proceeding; expand, clarify or correct information in an earlier report; add or amend charges before a hearing is scheduled; provide the board with information not related to the violation, but which may affect the



board's decision regarding the appropriate disposition; provide additional information to the board at any time requested by the board; or change the P&CSD recommendation. A copy of the supplemental parole violation report shall be given to the parolee within 4 days after the report has been submitted to the board.

NOTE: Authority cited: Section 576.2, Penal Code. Reference: Sections 3052, 3053 and 3063, Penal Code.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).

#### **2620. Recommendations.**

The P&CSD shall recommend the appropriate alternative necessary to deal with the violation charged. The primary concern shall be for the public safety. In a parole violation report the P&CSD may make the following recommendations:

(a) Continue on Parole. This recommendation may be used when the violation charged is not serious enough to warrant reimprisonment. A continue on parole recommendation may include a recommendation to delete, modify, or add special conditions of parole.

(b) Local Program. This recommendation may be used when the violation charged does not require reimprisonment of the parolee but does require treatment which can be obtained in a community facility or program.

(c) Schedule for Revocation Proceedings, Psychiatric Treatment. This recommendation shall be used only when a parolee's adjustment indicates the parolee may be suffering from a mental disorder which substantially impairs the parolee's ability to maintain himself or herself in the community, or which makes the parolee a danger to himself or herself or others, when necessary psychiatric treatment cannot be obtained in the community. The recommendation shall not be made when violations of another term or condition of parole are charged. When this recommendation is made a psychiatric report shall accompany the parole violation report and shall be made available to the hearing panel.

(d) Schedule for Revocation Proceedings. This recommendation may be used whenever the violation charged is so serious that reimprisonment is necessary whether or not the parolee is in need of medical or psychiatric treatment. This recommendation shall be used when a parolee who is required to register under Penal Code Section 290 fails to register within the time prescribed pursuant to Section 290(g) of the Penal Code.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 290, 3000, 3053, 3056, 3057, and 3060, Penal Code; Sections 11561 and 11563, Health and Safety Code.

#### HISTORY:

1. Amendment of subsection (e) filed 12-28-79 as an emergency; designated effective 1-1-80 (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-1-80.
2. Certificate of Compliance filed 5-1-80 (Register 80, No. 18).
3. Amendment of subsection (d) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
4. Repealer of subsection (c) and amendment of subsection (e) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
5. Relettering and amendment of former subsections (d) and (e) to new subsections (c) and (d) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).

6. Amendment of first paragraph filed 9-23-96; operative 10-23-96 (Register 96, No. 39).

## Article 3. Revocation Procedures

#### **2635. General.**

All revocation hearings should be held in the community near where the alleged violation occurred unless the parolee has been transferred to the department under Section 2605. The time limits of Section 2640 apply to all revocation hearings. Prerevocation hearings may be held as provided in Section 2644.

#### HISTORY:

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

#### **2635.1. Revocation Period.**

(a) General. Any period of confinement ordered pursuant to revocation of parole shall be added to the period of parole not to exceed the maximum period of parole specified in Section 2515. The revocation periods specified in this section apply if the parolee has not received a new commitment to prison.

(b) Crimes Committed On or Before December 31, 1978. If the crime for which the parolee was committed to prison occurred on or before December 31, 1978, confinement pursuant to parole revocation shall not exceed six months. Time in custody on a parole hold prior to the revocation hearing shall be credited to the revocation period.

(c) Crimes Committed On or After January 1, 1979. If the crime for which the parolee was committed to prison occurred on or after January 1, 1979, confinement pursuant to parole revocation shall not exceed one year. Time in custody on a parole hold shall be credited to the revocation period.

NOTE: Authority cited: Section 5076.2, Penal Code. References: Sections 3000, 3057, Penal Code (Stats. 1978, c. 582).

#### HISTORY:

1. New section filed 12-29-78 as an emergency; effective upon filing (Register 78, No. 52).
2. Certificate of Non-compliance repealing section transmitted to OAH 3-14-79 and filed 3-20-79 (Register 79, No. 11).
3. New section filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
4. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).

#### **2636. P&CSD Review.**

(a) Case Conference. After placement of a parole hold or discovery of information indicating a possible violation of parole, a case conference shall be held to determine if the violation shall be reported to the board as required by Section 2616. If the decision is that the violation must be reported to the board, the parole agent shall prepare a parole violation report.

(b) Unit Supervisor Review. After preparation of a parole violation report, the unit supervisor shall review the report and either concur with the recommendation made or make an alternative recommendation. The unit supervisor shall submit the report to the district administrator.

(c) District Administrator Review. The district administrator shall review the parole violation report and either concur with the recommendation made or make an alternative recommendation.

(d) Notification to Board. The violation report shall be forwarded to the board at the central office calendar if the district administrator recommends any action other than schedule for revocation proceedings, if the parolee is in suspended status, if the parolee has an imminent discharge date or if the case requires any action other than schedule for revocation proceedings.



If the district administrator recommends that the parolee be scheduled for a prerevocation or revocation hearing and the case does not require any board action prior to the hearing, the district administrator shall notify the board hearing coordinator of the date the parolee was paroled, the date the parole hold was placed, and the need for a revocation hearing. The hearing coordinator shall schedule a revocation hearing based on that information and recommendation.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3060, Penal Code.

#### HISTORY:

1. Amendment of subsection (c) and new subsection (d) filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).

#### **2637. Central Office Calendar.**

(a) General. The board at the central office calendar shall review the conduct and progress of parolees and consider parolees for the scheduling of revocation proceedings. The primary concern for the board at the central office calendar shall be for public safety as discussed in section 2646.

(b) Decisions. The board at the central office calendar may make any decisions that do not require hearings. Examples of central office calendar decisions include:

(1) To Suspend Parole Pending Further Determination. This decision shall be used for parolees who have absconded. The Board of Prison Terms may set the time of parole suspension from either the date of last contact with the parolee or, if contact has not been established, the date that the parolee failed to report as instructed. The parolee may produce evidence for reconsideration by the board.

(2) To Issue Warrants. This decision shall be used following suspension of parole for parolees who have absconded parole, and any other time that a law enforcement agency requires a warrant to support the arrest of a parolee.

(3) To Order to Prison for Further Proceedings. This decision shall be used for parolees incarcerated by another state or the federal government.

(4) To Schedule for Pre-revocation Proceedings. This decision shall be used when a parolee is suspected of a serious violation of parole and is within 30 days of discharge from parole. This decision may be used at any other time as appropriate under the facts of the case.

(5) To Schedule for Limited Placement Proceedings. This decision shall be used for parolees charged with parole violations which, if true, would not appear sufficiently serious to warrant return to prison for an extended period, but who need placement in the Substance Abuse Treatment Control Unit (SATCU). The parolee will ordinarily be released within 90 days, but if further violations occur within the 90 days, full revocation proceedings may be scheduled.

(6) To Schedule for Revocation Proceedings: Psychiatric Treatment. This decision shall be used when facts are presented indicating that the parolee is suffering from a mental disorder which substantially impairs his or her ability to maintain himself or herself in the community, or which makes him or her a danger to himself/herself or others, when necessary psychiatric treatment cannot be obtained in the community. This decision shall be made only after receipt of a written statement from a mental health professional who has conducted a face-to-face evaluation of the parolee, and found that the parolee is an individual described in § 2616(a)(14). This decision shall not be made when violations of another term or condition of parole are charged.

(7) To Schedule for Revocation Proceedings. This decision shall be used for parolees charged with parole violations which, if true, would appear sufficiently serious to warrant return to prison.

(8) To Dismiss Charge(s). This decision shall be used to dismiss charges which will not be considered at the scheduled hearing.

(9) To Continue on Parole. This decision shall be used to continue a parolee on parole. If done "pending further determination" it may be used for a previously suspended parolee who does not need to be in custody pending a hearing.

(10) Reinstate on Parole. This decision shall be made whenever a suspended parolee at large has been arrested in California, has been located in California or is available to return to California from another state or country. It indicates the date that the period of parole commences after having been tolled during the period the parolee was at large.

(11) To Vacate Early Discharge Date. This decision shall be used in conjunction with the decisions listed in subsections (b)(1)-(b)(7) when a parolee, who was previously granted a discharge date earlier than the statutory maximum discharge date, will discharge on the early discharge date before any action ordered by the board can be completed. If an early discharge date is vacated, the statutory maximum discharge date becomes the discharge date.

(12) Parole Period Extended Pending Revocation Hearing. This decision shall be used to retain jurisdiction when a parolee charged with a parole violation will discharge prior to a revocation hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3056, 3057, 3060 and 3064, Penal Code; Sections 11561 and 11563, Health and Safety Code.

#### HISTORY:

1. Amendment of subsection (b) filed 10-7-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (c)(8) and new subsections (c)(9) and (c)(10) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
3. New subsection (c)(11) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
4. New subsection (c)(6) and renumbering of subsections (c)(6) through (c)(11) to (c)(7) through (c)(12) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
5. Amendment of subsection (c)(5) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
6. Repealer of subsection (b) and relettering of subsection (c) to subsection (b) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
7. Amendment of subsection (b)(6) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
8. Amendment of subsection (a) filed 9-23-96; operative 10-23-96 (Register 96, No. 39).
9. Amendment of section and Note filed 10-9-97 as an emergency; operative 10-9-97 (Register 97, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-6-98 or emergency language will be repealed by operation of law on the following day.
10. Certificate of Compliance as to 10-9-97 order transmitted to OAL 1-7-98 and filed 2-2-98 (Register 98, No. 6).
11. Change without regulatory effect amending subsection (b)(6) filed 5-8-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 19).



**2638. P&CSD Hearing Coordinator.**

The board at the central office calendar shall notify the P&CSD hearing coordinator of a decision to order a revocation hearing. The P&CSD hearing coordinator shall assure that all necessary prehearing procedures are followed including making an attorney determination under Chapter 6, Article 5 and screening witnesses under Chapter 6, Article 4.

**HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

**2639. Central Office Hearing Coordinator.**

The P&CSD hearing coordinator shall notify the central office hearing coordinator of the decision regarding an attorney and witnesses. The central office hearing coordinator shall schedule the hearing and assure that an attorney is appointed if necessary.

**HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).

**2640. Time Limits.**

(a) General. The time limits specified in this section are intended to facilitate the timely completion of various segments of the revocation process in order to hold the revocation hearing within a reasonable time after the placement of the parole hold. These time limits are directory and do not affect the board's jurisdiction to hold a revocation hearing in the event of delay which does not prejudice the parolee.

In any case in which the chief deputy commissioner determines that the time limits have been exceeded and the delay may prejudice the parolee, the board's central office calendar shall act to complete the revocation hearing process without further delay or to dismiss the parole violation charges and remove the parole hold.

These time limits shall be computed in calendar days. If a date falls on a weekend or holiday, the time limits shall be met on the next working day.

**(b) Advice of Rights to Parolee.**

(1) General. Upon notification that a revocation hearing has been ordered, the P&CSD hearing coordinator shall notify the parolee in writing of his rights within 24 days from the placement of the parole hold. In all cases the P&CSD hearing coordinator shall obtain a decision from the parolee regarding witnesses and an attorney within four days of serving the parolee with the notification of rights.

(c) Notification to Board. Within 23 days of the placement of the parole hold, the regional hearing coordinator shall notify the central office hearing coordinator that a revocation hearing should be scheduled, if that is the recommendation (see § 2636). If P&CSD does not recommend a revocation hearing the violation report shall be forwarded to the central office calendar within 23 days of placement of the hold.

(d) Central Office Hearing Coordinator. Upon notification of the decision regarding an attorney or witnesses, the central office hearing coordinator shall appoint an attorney, if necessary, and shall schedule the revocation hearing to be held as provided in subsection (f). The central office hearing coordinator shall notify the P&CSD hearing coordinator of the date and time of the hearing.

(e) Hearing. The revocation hearing shall be held within a reasonable time after the placement of the parole hold, unless the parolee waives the hearing pursuant to § 2641. The parole revocation hearing should be held within 45 days of the date the parole hold is placed.

(f) Revocation Hearing: Psychiatric Treatment. If the parole agent determines the parolee cannot be retained locally pending the

revocation hearing due to acute psychosis, the parole agent may request authorization from the board at its central office calendar for an emergency return pursuant to § 2605(c). Transfer of the parolee in no way eliminates the responsibility of the parole agent or the Parole and Community Services Division to prepare and to insure timely conduct of the hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3053, 3056, 3057 and 3060, Penal Code; and *Morrissey v. Brewer*(1972) 408 U.S. 471.

**HISTORY:**

1. Amendment of subsections (a) and (g) filed 10-5-89; operative 11-4-89 (Register 89, No. 41). For prior history, see Register 82, No. 52.
2. Amendment of section and Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

**2641. Waiver of Hearing.**

(a) Unconditional Waiver. A parolee may waive the revocation hearing. An unconditional waiver includes a waiver of any right to a personal appearance before the board to contest the charges against the parolee, but shall not be an admission of guilt. Following an unconditional waiver, the board may extend the period of parole up to the statutory maximum (see section 2515). The parolee may not later request a hearing, but may appeal the amount of time assessed by the Board.

(b) Optional Waiver. A parolee who is undergoing criminal prosecution may conditionally waive the revocation hearing, but retain the option to request a hearing as provided in this subsection. Upon receipt of a signed optional waiver, the board at the central office calendar will determine whether there is good cause to revoke parole. This determination will be made without a hearing or personal appearance by the parolee.

If the board orders parole revoked and the parolee returned to custody, the parolee then may request a revocation hearing. A hearing request must be received by the board no more than 15 days following sentencing or final disposition at the trial court level in the criminal proceedings and no later than two months before expiration of the revocation period ordered by the board at the central office calendar. Upon receipt of a hearing request, the board shall schedule a revocation hearing. At the hearing the panel may take any appropriate action.

(c) Revocation Hearing: Psychiatric Treatment. A parolee who is scheduled for a revocation hearing for psychiatric treatment shall not be permitted to waive the revocation hearing.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3053, 3056, 3057 and 3060, Penal Code.

**HISTORY:**

1. Amendment filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
3. Amendment of subsection (a) filed 12-29-78 as an emergency; effective upon filing (Register 78, No. 52).
4. Certificate of Non-compliance reinstating the language of subsection (a) as it existed prior to emergency amendment transmitted to OAH 3-14-79 and filed 3-20-79 (Register 79, No. 11).



5. Repealer of subsection (b) filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
6. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).
7. New subsection (b) filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
8. New subsection (c) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
9. Amendment of subsection (a) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
10. Amendment of subsection (c) filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
11. Amendment of subsection (b) filed 8-15-91; operative 9-16-91 (Register 91, No. 51).
12. Editorial correction of subsection (b) (Register 95, No. 45).
13. Amendment of subsections (a) and (b) filed 8-24-98; operative 9-23-98 (Register 98, No. 35).

#### **2642. Prehearing Procedures.**

The P&CSD hearing coordinator and the central office hearing coordinator shall assure that: time limits are met; the parolee is advised of his rights; the parolee's requests for witnesses are screened; any necessary witnesses are notified of the date, time and place of the hearing; all documentary and physical evidence is disclosed, unless designated confidential under Section 2235; requests for continuances are decided under Section 2253; necessary attorney representation is arranged; and the case is otherwise prepared for the hearing.

#### **2643. Parolee Rights.**

(a) General. At the revocation hearing the parolee shall have the rights specified in §§ 2245-2255. The record of the hearing shall be a tape recording.

(b) Notification of the Charges and the Supporting Evidence. The parolee and his attorney, if he has one, shall receive copies of the parole violation report, any supplemental reports, and any evidence supporting the parole violation charges unless designated confidential pursuant to departmental regulations (see § 2235). The parolee and his attorney shall receive copies of any police, arrest, or crime reports relevant to the parole violation charges. Any information which is confidential pursuant to the department rules shall not be disclosed, but the parolee and his attorney shall be notified that confidential information has been deleted from the report.

(c) Attorney Representation. The parolee is entitled to request the assistance of an attorney at any revocation hearing. If requested, an attorney determination shall be made pursuant to the procedures of Article 6 of this chapter. If the request for an attorney is granted, the parolee is entitled to retained counsel or appointed counsel if the parolee is indigent.

(d) Witnesses. The parolee is entitled to request the presence of evidentiary and/or dispositional witnesses at any revocation hearing. The witnesses shall be called unless the hearing panel has specific reason to deny the request. Witnesses shall be screened pursuant to the procedures of § 2668. The parolee may request subpoena(s) or subpoena(s) duces tecum as provided in §§ 2675-2682. If denied, the specific reasons for denial shall be documented and a copy of the document given to the parolee. During the hearing the parolee has the right, under the direction of the hearing panel, to question all witnesses.

(e) Notice of the Hearing. At any hearing where witnesses are approved or an attorney is granted, notice of the hearing shall be given as soon as possible but no later than four days before the hearing.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3041, 3042, 3063.5, 3063.6, 5076.1 and 5076.3, Penal Code; Gagnon v. Scarpelli(1972) 411 U.S. 778.

#### **HISTORY:**

1. Amendment of subsection (b) filed 9-21-78 as an emergency; designated effective 9-25-78. Filed in the week of Register 78, No. 38, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
2. Certificate of Compliance filed 12-29-78 (Register 78, No. 52).
3. Amendment of subsection (d) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
4. Amendment of subsection (c) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
5. Amendment of section and Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

#### **2644. Prerevocation Proceedings.**

(a) General. Prerevocation hearings may be held when a parolee is suspected of a serious violation of parole within 30 days of discharge from parole, and the board at the central office calendar has not taken an action to extend the parole period pending the revocation hearing. A prerevocation hearing should be held when a parolee is suspected of a serious violation of parole within 30 days of the parolee's maximum discharge date and is in custody on a parole hold. At the prerevocation hearing the only issue to be decided by the panel is whether there is probable cause to believe the parolee has violated parole as charged. Mitigating circumstances are not at issue at this hearing unless they are so bound up in the offense itself that they cannot be considered separately.

(b) Initiating Prerevocation Proceedings. When a parole agent determines that a prerevocation hearing may be necessary under Section 2637(c)(4) the parole agent shall immediately prepare a report specifying the charges and supporting evidence, including the reasons for requesting a prerevocation hearing. If the district administrator recommends that a prerevocation hearing should be scheduled the procedures of Section 2636(d) shall be followed.

(c) Oath. At the hearing witnesses shall be required to testify under oath.

(d) Parolee Rights. At a prerevocation hearing the parolee shall have the rights provided in Section 2643.

(e) Decision. The hearing panel shall make any disposition appropriate to the facts of the case including the following:

(1) No Probable Cause Found. If the hearing panel finds no probable cause, the parolee shall be continued on parole. The parole hold shall be removed immediately after the hearing. A hold may be retained until the end of the next working day after the hearing if the panel approves the retention and states its reasons.

(2) Charge Dismissed. The charge may be dismissed if there is insufficient information to determine whether there is probable cause or if the interest of justice requires.

(3) Probable Cause Found. If the hearing panel determines that there is probable cause, the hearing panel shall order a revocation hearing scheduled. If the board at the central office calendar had vacated the parolee's early discharge date (Section 2637(c)(10)) the hearing panel shall set the period of parole at the statutory maximum.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3000, Penal Code.

#### **HISTORY:**

1. Amendment of subsection (e) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (f)(3) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
3. Amendment of subsections (b) and (f)(1) filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).



4. Amendment of subsection (a) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
5. Repealer of subsection (c) and relettering of subsections (d)-(f) to subsections (c)-(e) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### **2645. Hearing Procedures: Revocation.**

(a) General. At the revocation hearing the hearing panel shall decide whether there is good cause to believe a condition of parole has been violated and, if so, the most appropriate disposition. The parolee may offer mitigating circumstances either to the violation charged or to the disposition during the appropriate part of the hearing.

If the facts of the violation charged have been settled against the parolee in a criminal prosecution or a probation revocation hearing, the parolee may not contest the facts settled against him but may contest: the fact of a post-parole conviction; whether the conviction violated a condition of parole (by law every conviction is a violation of parole); and whether the parolee suffered the conviction. If the facts against the parolee have not been settled in a criminal prosecution or probation revocation hearing, the parolee may contest the violation charged.

If the parolee is charged with failing to register under Penal Code section 290, the only factual issues at the revocation hearing are whether the parolee is required to register under Penal Code section 290 and whether the parolee failed to register.

(b) Oath. The hearing panel shall require all witnesses to testify under oath.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 290 (1979 Stats., Ch. 944), 3041, 3042, 3063.5, 3063.6, and 5076.1, Penal Code.

#### **HISTORY:**

1. Amendment filed 9-21-78 as an emergency; designated effective 9-25-78. Filed in the week of Register 78, No. 38, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
2. Certificate of Compliance filed 12-29-78 (Register 78, No. 52).
3. Amendment of subsection (a) filed 12-28-79 as an emergency; designated effective 1-1-80 (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-1-80.
4. Certificate of Compliance filed 5-1-80 (Register 80, No. 18).
5. Repealer of subsection (b) and relettering of subsection (c) to subsection (b) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).

#### **2646. Disposition.**

The hearing panel shall make a disposition appropriate to the facts of the case including consideration for public safety. Parole involves conditional liberty and a parolee who engages in violation of the condition(s) of parole may not be capable of successful reintegration into society and may compromise public safety. Nothing in this section shall prevent the board from imposing any of the following disposition alternatives when the board or the department seek criminal prosecution for conduct constituting a violation of the law. Disposition alternatives include the following:

(a) No Violation Found. If the hearing panel finds that the parolee did not commit the violation charged, the parolee shall be continued on parole. If the board at the central office calendar had extended the parole period pending the revocation hearing, the panel shall discharge the parolee effective the date of the hearing.

(b) Charge Dismissed. The charge may be dismissed if there is insufficient information to determine whether the charge is true, if

the charge will not significantly affect the disposition, or if the interest of justice would be served.

If all the charges are dismissed in the case of a parolee whose parole period had been extended pending the revocation hearing the panel shall discharge the parolee effective the date of the hearing.

(c) Violation Found. If the hearing panel determines that the parolee committed the violation charged, the hearing panel shall make the appropriate decision necessary to handle the violation. Examples of disposition are:

(1) Continue on Parole. This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment. The decision to continue on parole may be accompanied by a decision to modify, add, or delete special conditions of parole. This decision cannot be used in the case of a parolee whose parole period had been extended pending the revocation hearing.

(2) Local Program. This disposition shall be used when the violation is not sufficiently serious to warrant reimprisonment but does indicate a need for treatment available in a community facility or program. This decision cannot be used in the case of a parolee whose parole period had been extended pending the revocation hearing.

(3) Return to Custody. This disposition shall be used when the violation is so serious that reincarceration is necessary or when the violation is the failure to register in a timely manner as required by Penal Code Section 290 or the failure to provide samples of blood and saliva pursuant to Penal Code section 3060.5, as provided in Penal Code sections 295 through 300.3. Any time in custody under a parole hold will be directed to the revocation confinement period.

(4) Return to Custody: Eligible for Work Furlough. This disposition shall be used in the following circumstances:

(A) The violation is so serious that reincarceration is necessary; and

(B) The parolee will be retained in a local facility which will permit parolee participation in work furlough; and

(C) The panel finds that the parolee may be permitted to participate in work furlough.

(5) Refix Discharge Date. If the board at the central office calendar had vacated the parolee's early discharge date the hearing panel shall set the period of parole at the statutory maximum.

(6) Discharge. If the board at the central office calendar had extended the period of parole pending the revocation hearing and the panel determines the violation does not warrant reimprisonment, the panel shall discharge the parolee effective the date of the hearing.

(d) Return to Custody: Psychiatric Treatment. This disposition shall be used when the sole finding of the panel is that the parolee has engaged in conduct indicating that his mental condition has deteriorated such that the parolee is likely to engage in future criminal behavior. This disposition shall only be used when the mental condition substantially impairs the parolee's ability to maintain himself or herself in the community and necessary treatment cannot be obtained in the community.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 290, 295-300.3, 3000, 3053, 3056, 3057, 3060 and 3060.5, Penal Code.

#### **HISTORY:**

1. Amendment of subsection (c)(5) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (c)(5) and new subsection (c)(6) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).



3. Amendment of subsections (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and new subsection (c)(7) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
4. Editorial correction (Register 79, No. 14).
5. Amendment of subsection (c)(5) filed 12-28-79 as an emergency; designated effective 1-1-80 (Register 79, No. 52). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-1-80.
6. Certificate of Compliance filed 5-1-80 (Register 80, No. 18).
7. Amendment of subsection (c)(4) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
8. Renumbering of subsections (c)(6) and (c)(7) to subsections (c)(7) and (c)(8) and new subsection (c)(6) filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).
9. Repealer of subsection (c)(3) and amendment of subsection (c)(5) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
10. Amendment of subsection (c) and new subsection (d), filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
11. Amendment of first paragraph and subsection (b) filed 9-23-96; operative 10-23-96 (Register 96, No. 39).
12. Change without regulatory effect amending subsection (c)(3) and amending Note filed 6-28-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 26).
13. Amendment of first paragraph and subsections (a)(3), (a)(6) and (d) filed 11-20-2001; operative 12-20-2001 (Register 2001, No. 47).

#### 2646.1. Violations and Length of Confinement.

The following are parole revocation assessment guidelines when good cause has been found on a single parole violation charge. The ranges represent the suggested period of confinement when a return to custody is imposed as a disposition for a violation of parole. The ranges are suggested for a parolee with no prior returns to custody. The assessment may be consecutive to or concurrent with other charges as long as the total period of confinement does not exceed the revocation period specified at § 2635.1. The hearing panel may impose a period of confinement that is outside the assessment range if justified by the particular facts of the individual case and if the facts supporting the term are stated on the record. This section is declaratory of existing board policy and is not intended to modify the authority of an individual hearing panel or the interests of a prisoner subject to a parole revocation.

##### Type I Violations Assessment Range (0 to 4 months)

- (a) Technical Violations of Parole
  - (1) Use of alcohol
  - (2) Failure to participate in testing for the presence of alcohol or any controlled substance, including marijuana
  - (3) Instructions: Changing employment without informing P&CSD
  - (4) Failure to inform P&CSD of criminal arrests
  - (5) Instructions: Leaving county of residence beyond 48 hours without P&CSD approval
  - (6) Instructions: Traveling beyond 50 miles from residence without P&CSD approval
  - (7) Failure to follow other instructions from P&CSD

(0 to 4 months)

- (b) Controlled Substance Violations
  - (1) Use of a controlled substance, including marijuana
  - (2) Possession of marijuana (1oz. or less)
  - (3) Under the influence of controlled substance, including marijuana
  - (4) Possession of controlled substance paraphernalia
  - (5) Presence in a place where a controlled substance is used, sold or given away

##### Type II Violations Assessment Range (5 to 9 months)

- (c) Technical Violations of Parole

- (1) Failure to attend Parole Outpatient Clinic
  - (2) Violations of other special conditions of parole
  - (3) Failure to report to P&CSD
  - (4) Absconding parole supervision
  - (5) Instructions: Changing residence without informing P&CSD
  - (6) Unauthorized possession of a knife with a blade exceeding two inches
  - (7) Access to a firearm
  - (8) Access to a deadly weapon
  - (9) Access to a simulated firearm
  - (10) Access to a stun gun or taser
  - (11) Access to a tear gas dispenser
  - (12) Access to a knife with a blade exceeding two inches
  - (13) Access to a crossbow
  - (14) Possession of ammunition
  - (15) Access to ammunition for a firearm
- (5 to 9 months)
- (d) Sex Offenses
    - (1) Consensual participation in oral copulation in a jail or prison
    - (2) Consensual participation in sodomy in a jail or prison
    - (3) Indecent exposure
    - (4) Pimping or pandering
    - (5) Prostitution
    - (6) Failure to register pursuant to Penal Code section 290
    - (7) Any other sex offense involving an adult victim where the offense is not accomplished against the victim's will
- (5 to 9 months)
- (e) Assault and Battery
    - (1) Assault
    - (2) Battery without injury
- (5 to 9 months)
- (f) Property Offenses
    - (1) Possession of burglary tools
    - (2) Tampering with an automobile
    - (3) Making, drawing, or delivering a check, draft or order with insufficient funds
    - (4) Operating a motor vehicle without owner's permission
    - (5) Petty theft
    - (6) Petty theft with a prior conviction or judicial/administrative adjudication
    - (7) Receiving or possession of stolen property
    - (8) Misappropriation of public money (less than \$400)
- (5 to 9 months)
- (g) Controlled Substance Violations
    - (1) Possession of a controlled substance
    - (2) Possession of marijuana (over 1 oz.)
    - (3) Sale of substance in lieu of a controlled substance, including marijuana
    - (4) Forgery of a prescription
- (5 to 9 months)
- (h) Driving Violations
    - (1) First offense driving under influence of alcohol/drugs
    - (2) Reckless driving with no personal injury
    - (3) Hit and run causing property damage
    - (4) Driving with revoked or suspended license
    - (5) Any other misdemeanor driving violation not listed in this section
- (5 to 9 months)
- (i) Miscellaneous Crimes Against Others and Property
    - (1) Threats or harassment not constituting terrorist threats
    - (2) Contributing to the delinquency of a minor
    - (3) Destroying public property
    - (4) Resisting arrest with no prior convictions or judicial/administrative adjudications
    - (5) Trespassing
    - (6) Vandalism or malicious mischief



- (7) Refusal to sign parole conditions (maximum 6 months per Penal Code section 3060.5)
- (8) Illegal entry into the United States (5 to 9 months)
- (j) Miscellaneous Violations of Law
- (1) Disturbing the peace
- (2) Drunk in public
- (3) Failure to register pursuant to Health and Safety Code 11590
- (4) Providing false identification to a peace officer
- (5) Failure to participate in or complete a batterer's program
- (6) Incitement to riot
- (7) Destroy or damage a prison or jail in the amount of \$400 or less
- (8) Any other felony that does not involve the use of force or violence or possession of a weapon
- (9) Any other misdemeanor not listed in this section
- (10) Any conspiracy to commit a Type II violation
- (11) Any attempt to commit a Type II violation
- (12) Any solicitation to commit a Type II violation
- (13) Accessory to a Type II violation
- Type III Violations Assessment Range (10 to 12 months)
- (k) Technical Violations of Parole
- (1) Association with persons prohibited by the board or P&CSD
- (2) Being present in prohibited areas without permission
- (3) Any violation of a condition involving gang participation or association (10 to 12 months)
- (l) Homicide
- (1) Murder
- (2) Voluntary manslaughter
- (3) Involuntary manslaughter (10 to 12 months)
- (m) Robbery
- (1) All armed robberies
- (2) All unarmed robberies
- (3) Carjacking (10 to 12 months)
- (n) Sexual Offenses - Major
- (1) Rape
- (2) Unlawful sexual intercourse or statutory rape
- (3) Assault with intent to commit rape, sodomy, oral copulation, or mayhem
- (4) Lewd and lascivious acts with a child under 14 years
- (5) Oral copulation with a minor or an adult victim where the offense was accomplished against the adult victim's will
- (6) Sodomy with a minor or an adult victim where the offense was accomplished against the adult victim's will
- (7) Incest
- (8) Annoying children in violation of Penal Code section 647.6
- (9) Loitering around or within schools or playgrounds
- (10) Penetration of the genital or anal openings by foreign object of a minor or an adult victim where the offense was accomplished against the adult victim's will
- (11) Sexual battery
- (12) Indecent exposure with a prior conviction or judicial/administrative adjudication
- (13) Any other sexual offense involving minors not listed in this section
- (14) Any other sexual offense against adult victims where the offense was accomplished against the victim's will not listed in this section (10 to 12 months)
- (o) Assault and Battery - Major
- (1) Assault with a deadly weapon

- (2) Assault with a deadly weapon upon a peace officer
- (3) Assault with a caustic substance
- (4) Assault with the intent to commit murder
- (5) Assault with force likely to produce great bodily injury
- (6) Assault on a spouse or child
- (7) Administration of poison
- (8) Mayhem
- (9) Battery upon a peace officer
- (10) Battery upon a spouse or child
- (11) Cruelty to a child
- (12) Any other crime where bodily injury is inflicted not listed in this section
- (13) Any other crime posing a major personal risk to the safety of others not listed in this section
- (14) Drive-by shooting
- (15) Threats to a commissioner or deputy commissioner or their families (10 to 12 months)
- (p) Property Offenses - Major
- (1) First degree burglary
- (2) Second degree burglary
- (3) Credit card theft or illegal use of a credit card
- (4) Possession of counterfeit dies or plates
- (5) Embezzlement
- (6) Forgery
- (7) Fraud
- (8) Grand theft
- (9) Grand theft automobile
- (10) Extortion
- (11) Misappropriation of public moneys (more than \$400) (10 to 12 months)
- (q) Alcohol and Controlled Substance Violations - Major
- (1) Sale or furnish a controlled substance, including marijuana, to a minor
- (2) Sale of a controlled substance, including marijuana
- (3) Possession of a controlled substance, including marijuana, for sale
- (4) Manufacture of a controlled substance
- (5) Bringing a controlled substance, including marijuana, into a jail or prison
- (6) Use of a controlled substance, including marijuana, in a jail or prison
- (7) Possession of a controlled substance, including marijuana, in a jail or prison
- (8) Bringing alcohol into a jail or prison
- (9) Use of alcohol in a jail or prison
- (10) Possession of alcohol in a jail or prison (10 to 12 months)
- (r) Weapons Offenses
- (1) Manufacture/sale of a deadly weapon (other than a firearm)
- (2) Possession of a deadly weapon
- (3) Use of a deadly weapon
- (4) Use of a deadly weapon in the commission of a crime
- (5) Possession of a firearm
- (6) Possession of a simulated firearm
- (7) Use of a firearm
- (8) Bringing a deadly weapon or firearm into a jail or prison
- (9) Possession or manufacture of a deadly weapon or explosive device in a jail or prison
- (10) Possession of a concealable firearm
- (11) Possession of any firearm with prior firearm conviction
- (12) Possession of non-concealable firearm without prior use conviction
- (13) Armed with a firearm in the commission of a felony



- (14) Possession of a crossbow
- (15) Possession of a stun gun or taser
- (16) Possession of a tear gas gun or dispenser
- (17) Use of a stun gun or taser
- (18) Use of tear gas gun or dispenser
- (19) Brandish a weapon (other than a firearm)
- (20) Brandish a firearm
- (21) Other offenses involving the use/possession of a firearm or deadly weapon

(22) Other weapons violations

(10 to 12 months)

- (s) Driving Violations - Major
- (1) Driving under the influence of alcohol/drugs with a prior conviction or judicial/administrative adjudication
- (2) Reckless driving in willful or wanton disregard for the safety of others
- (3) Driving under the influence of alcohol/drugs causing injury
- (4) Vehicular manslaughter
- (5) Any other felony driving violations not listed in this section

(10 to 12 months)

- (t) Miscellaneous Major Crimes
- (1) Child stealing
- (2) False imprisonment
- (3) Hostage taking
- (4) Kidnapping
- (5) Arson of inhabited dwelling
- (6) Arson of other structure or forest land
- (7) Escape from a jail or prison without force
- (8) Escape from a jail or prison with force
- (9) Destroy or injure a jail or prison (more than \$400)
- (10) Possession of caustic chemicals with intent to harm others
- (11) Terrorist threats
- (12) Stalking
- (13) Commission of a serious felony as defined at Penal Code section 1192.7
- (14) Commission of a violent felony as defined at Penal Code section 667.5
- (15) Conspiracy to commit a Type III violation
- (16) Attempt to commit a Type III violation
- (17) Solicit another to commit a Type III violation
- (18) Accessory to a Type III violation

(0 to 12 months)

- (u) Psychiatric Treatment
- (1) Exhibits conduct indicating that the parolee's mental condition has deteriorated such that the parolee is likely to engage in criminal behavior

NOTE: Authority cited: Sections 3040, 3041, 3052, 5076.2 and 5077, Penal Code. Reference: Sections 3056, 3057, 3060 and 3060.5, Penal Code.

#### HISTORY:

1. New section filed 11-20-2001; operative 12-20-2001 (Register 2001, No. 47).

#### **2647. Time in Custody.**

In no case shall total time in custody before and after revocation proceedings exceed the revocation period specified in Section 2635.1.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3057 and 3060, Penal Code.

#### HISTORY:

1. Renumbering of Section 2647 to Section 2648 and new Section 2647 filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41).
3. Renumbering of Section 2647 to Section 2648 and new Section 2647 filed 11-3-78 as an emergency; effective upon filing (Register 78, No. 44).
4. Certificate of Compliance filed 3-2-79 as to filing of 11-3-78 (Register 79, No. 9).
5. Amendment of subsection (a) filed 3-15-79 as an emergency; effective upon filing (Register 79, No. 11).
6. Certificate of Compliance filed 5-30-79 (Register 79, No. 22).
7. Amendment of subsection (c) filed 5-1-80; effective thirtieth day thereafter (Register 80, No. 18).
8. Repealer of subsection (b) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
9. Amendment filed 10-5-89; operative 11-4-89 (Register 89, No. 41).

#### **2647.1. Time in Custody Psychiatric Treatment.**

(a) If a parolee is ordered revoked and returned to custody, psychiatric treatment, the time in custody shall not be added to the parole period.

(b) If, during the revocation period, the parolee's condition changes so that he or she is no longer a person described in Section 2616(a)(14), department staff shall so certify and recommend release of the parolee to central office calendar. The board at the central office calendar shall take action on the recommendation within three working days of receipt of the recommendation.

(c) If the parolee is not being actively treated by the department in a psychiatric program or in a treatment program operated by the State Department of Mental Health, the department shall immediately submit the case to the central office calendar with its recommendation.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3057 and 3060, Penal Code.

#### HISTORY:

1. New section filed 10-5-89; operative 11-4-89 (Register 89, No. 41).
2. Change without regulatory effect amending subsection (b) filed 5-8-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 19).

#### **2648. Posthearing Procedures.**

(a) No Violation. If no violation is found, the parole hold shall be removed immediately after the hearing. The hold may be retained until the end of the next working day after the hearing if the panel approves the retention and states its reasons.

(b) Charges Dismissed. If the charges are dismissed, the parole hold shall be removed immediately after the hearing. The hold may be retained until the end of the next working day after the hearing if the panel approves the retention and states its reasons.

(c) Violation Found. If a parolee who is undergoing criminal prosecution is ordered returned to custody, the parolee shall be retained in local custody under a parole hold until termination of the prosecution. When the prosecution terminates the parolee shall be returned to prison or referred to the board at the central office calendar for modification of the revocation period if the revocation period is almost completed.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code; Section 11150, Health and Safety Code.

#### HISTORY:

1. Amendment of subsection (c) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Renumbering of Section 2647 to Section 2648 filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
3. Repealer filed 11-3-78 as an emergency; effective upon filing (Register 78, No. 44).
4. Renumbering from Section 2647 to Section 2648 filed 11-3-78 as an emergency; effective upon filing (Register 78, No. 44).
5. Certificate of Compliance filed 3-2-79 as to 11-3-78 filing (Register 79, No. 9).

#### **2649. Revoked Parolees with New Commitments.**

(a) If a parolee who was on parole from a term other than a statutory term of life, is returned to prison as a revoked parolee with a new commitment, department staff shall calculate the revocation release date and the release date for the new commitment. Except as hereinafter provided if the release date for the new commitment is later than the revocation release date, department staff shall discharge the former term, effective upon the revocation release date.

(b) Department staff shall not discharge a term imposed for:

(1) a crime in which the prisoner used force or violence or caused serious bodily injury as defined in paragraph (5) of subdivision (f) of section 243 of the Penal Code within the meaning of subdivision (e) of Penal Code section 2962; or

(2) an offense resulting in ineligibility for credits against confinement pursuant to a revocation of parole set forth in paragraph (2)(C) of subdivision (d) of section 3057 of the Penal Code.

(c) If the revocation release date is later than the release date for the new commitment, department staff shall refer the case to the board on the miscellaneous proceedings calendar. The board shall determine whether to discharge the former term.

(d) If the parolee was on parole from a statutory term of life the case will be placed on the miscellaneous proceedings calendar upon receipt of a new commitment to state prison. The board shall determine whether to discharge the former term. In determining whether to discharge the former term, the board shall consider the length of the term for the new commitment, the likelihood that the parole from the previous term will extend past the parole on the new term and the seriousness of any other parole violation charges which did not result in a new term.

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000 and 3057, Penal Code.

#### HISTORY:

1. New section filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. New subsection (b), amendment of subsection (a) and Note filed 8-15-91; operative 9-16-91 (Register 91, No. 51).

### Article 4. Evidence

#### **2665. General.**

All evidence relevant to the charges or disposition is admissible in parole postponement, rescission and revocation proceedings.

#### **2666. Documentary Evidence.**

Coordinator staff shall assure that all relevant documentary evidence is available at the hearing and has been made available to the parolee and his attorney prior to the hearing unless designated

confidential pursuant to § 2235. This evidence includes, but is not limited to, the violation report, arrest report, special services reports, psychiatric reports, and statements of witnesses. If relevant documentary evidence is not available, coordinator staff shall specify in writing what the evidence is and why it is unavailable. Any information from the prisoner or parolee supporting his request for an attorney shall be made available to the hearing panel.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3063.5, Penal Code; and *Morrissey v. Brewer*(1972) 408 U.S. 471.

#### HISTORY:

1. Amendment of section and new Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

#### **2667. Physical Evidence.**

Physical evidence should not ordinarily be required at a hearing. Coordinator staff may bring physical evidence to the hearing if: the prisoner or parolee has requested it or it appears necessary for the hearing; institutional security is not endangered; and there is no other means of presenting the information.

#### **2668. Witnesses.**

(a) Request.

(1) Prisoner or Parolee Request. The prisoner or parolee may request either evidentiary or dispositional witnesses. The request must be made sufficiently ahead of the hearing to notify the witnesses and to make arrangements to have them present at the hearing. The request shall include the reason for requesting the witness and the expected testimony of the witness.

(2) Staff Request. If in reviewing the case prior to a hearing, coordinator staff determine that a particular witness is necessary to provide testimony regarding an event material to the proceeding, attendance of that evidentiary witness shall be requested even though the prisoner or parolee has not requested that witness. In these circumstances, staff shall notify the prisoner, parolee, or his attorney.

(b) Coordinator staff shall review the list of requested witnesses prior to the hearing and may refuse to notify or call witnesses. Coordinator staff shall document the reason for any refusal to notify or call a witness, and the parolee, prisoner, or attorney shall be told of the refusal prior to the hearing.

(1) Evidentiary Witnesses. Staff shall determine that the testimony of an evidentiary witness is clearly irrelevant before refusing to call the witness. (Examples of irrelevant witnesses include a public official having no knowledge of the violation or witness with no knowledge or evidence in mitigation). A requested evidentiary witness should ordinarily be notified to attend even though the testimony may be cumulative, such as where several persons witnessed the incident.

(2) Dispositional Witnesses. Staff may refuse to notify any dispositional witness whose testimony is clearly irrelevant or cumulative. The testimony of dispositional witnesses whose testimony is of a general nature may be presented by means of written statements, letters, or affidavits.

(c) Notification.

(1) Evidentiary Witnesses. Coordinator staff are responsible for making every effort to assure the attendance of any requested evidentiary witness deemed necessary.

(2) Dispositional Witnesses. If the prisoner or parolee is not represented by an attorney, coordinator staff shall provide any needed assistance in notifying dispositional witnesses. If assisted by an attorney, the attorney must be advised that he is responsible for notifying dispositional witnesses who are not confined in prison. The attorney shall notify coordinator staff of witnesses so that arrangements can be made to have them enter custodial facilities.



(3) Documentation. All efforts to locate evidentiary witnesses shall be documented. Any efforts made to locate dispositional witnesses for a prisoner or parolee unassisted by counsel shall also be documented.

If a witness is located, but refuses to attend, the reason for the refusal shall be documented to give the hearing panel sufficient information to determine whether it is reasonable to excuse the witness' attendance.

(d) Transportation. Evidentiary witnesses who need transportation should be transported to the hearing where feasible. Dispositional witnesses for a prisoner or parolee without counsel may be provided transportation.

(e) Fearful Witnesses. Evidentiary witnesses who refuse to attend the hearing either because they would be subject to risk of harm if their identities were disclosed or who, even if their identity is known, fear for their safety should they attend the hearing, shall be interviewed by coordinator staff prior to the hearing and their information documented in writing or on tape. The reasons for their fear shall also be documented. The hearing panel shall determine whether there is good cause to excuse a witness' attendance and shall document the decision, including the reasons.

(f) Interviewing Witnesses. A prisoner, parolee, or his attorney has a right to speak to possible witnesses, but it is within the discretion of an individual witness whether to speak to or disclose his whereabouts to a prisoner, parolee, or his attorney. Staff shall not attempt to influence the witness' decision.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: *Morrissey v. Brewer*(1972) 408 U.S. 471.

#### HISTORY:

1. Amendment of subsection (a)(1) filed 10-27-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 44).
2. Amendment of subsection (a)(2) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. Amendment filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

## Article 5. Subpoenas

### 2675. General.

Subpoenas may be issued to require the attendance of witnesses or the production of documents at parole revocation or parole rescission hearings.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: *In re Carroll*, 80 Cal. App. 3d 22 (1978).

#### HISTORY:

1. Renumbering of Article 5 (Sections 2690-2701) to Article 6 and new Article 5 (Sections 2675-2682) filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).

### 2676. Request for Subpoena.

(a) The parolee or prisoner, the parolee's/prisoner's attorney, P&CSD staff, and board staff may request that a subpoena be issued.

(b) Requests for subpoenas shall be made directly to the District Hearing Agent or to the Classification and Parole Representative or other staff, as appropriate, at least 10 working days prior to the scheduled hearing.

(c) Subpoena Duces Tecum. A supporting declaration shall accompany each request for a subpoena duces tecum. The declaration shall show good cause for production of documentary evidence and specify precisely the documentary evidence to be

produced, the relevance and materiality of that evidence to the hearing, and that the requested witness has possession or control of the documentary evidence.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.3, Penal Code; and *In re Carroll*(1978) 80 Cal.App. 3d 22.

#### HISTORY:

1. Amendment of section and Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

### 2677. Criteria for Issuance.

(a) General. A subpoena or subpoena duces tecum shall be issued when it is necessary to secure the presence of a witness or the production of documents for a proceeding. Subpoenas shall be issued for evidence that is relevant and material. Each case shall be evaluated individually to make this determination, based upon the following factors:

- (1) Whether the person is an evidentiary or dispositional witness;
- (2) The relevance and materiality of the testimony or documents to the issues to be decided during the fact finding (violation) phase of the hearing;
- (3) The availability of the witness and/or the documents;
- (4) Whether the parolee/prisoner or the parolee's/prisoner's attorney has made reasonable efforts to produce an evidentiary witness;
- (5) Whether the witness resides more than 50 miles outside the county where the hearing will be held.

#### (b) Witnesses.

(1) General. Requests for subpoenas for witnesses shall be screened in accordance with the procedures of § 2668. A request for a subpoena may be denied for any witness whose testimony is clearly irrelevant or cumulative.

(2) Evidentiary Witnesses. Requests for subpoenas for evidentiary witnesses shall ordinarily be granted even though the testimony may be cumulative, such as when several persons witnessed the incident. Fearfulness of an evidentiary witness shall be considered and may justify denial of a request for a subpoena. See § 2668(e).

(3) Dispositional Witnesses. Normally only evidentiary witnesses will be subpoenaed. The testimony of dispositional witnesses whose testimony is of a general nature should be presented by means of written statements, letters, or affidavits. The parolee/prisoner or the parolee's/prisoner's attorney shall provide a written statement which summarizes the expected testimony and states how the testimony would be relevant, material, and non-cumulative.

(c) Documentary Evidence. Subpoenas duces tecum may be issued for documentary evidence that is relevant and non-cumulative and under the control of someone other than the parolee/prisoner, the parolee's/prisoner's attorney, P&CSD or the board. A declaration in support shall accompany the request for a subpoena duces tecum.

(d) At the Time of the Hearing. After the revocation or rescission hearing has commenced, the panel may request such subpoenas or subpoenas duces tecum as they deem necessary. The hearing shall be continued and rescheduled for a date at least 10-working days later.

(e) Denial. The reason for the denial of a request for a subpoena or a subpoena duces tecum shall be documented and a copy of the decision given to the parolee/prisoner or to the parolee's/prisoner's attorney.



NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 5076.3, Penal Code; and In re Carroll(1978) 80 Cal. App. 3d 22.

#### HISTORY:

1. Amendment of subsection (a) filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment of section and Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

#### **2678. Service.**

(a) Process. Service may be made by any person 18 years of age or older, in all parts of the state, no later than two days before the hearing, unless good cause for later service is shown.

(b) Subpoena. Except as provided in subdivision (c), service of a subpoena is completed by showing the original and delivering a copy to the witness personally.

(c) Subpoena for Peace Officer. When a peace officer designated in Penal Code section 830 is required as a witness in a proceeding relating to an event which he perceived or investigated in the course of his duties, a subpoena may be served by delivering a copy to the peace officer personally or by delivering two copies to his or her immediate superior or a designated agent. In those counties which have consented, delivery may be made by sending a copy electronically, including electronic mail, computer modem, facsimile, or other electronic means, to the immediate superior or designated agent who shall then deliver a copy of the subpoena to the peace officer as soon as possible and in no event later than a time which will enable the peace officer to comply with the subpoena.

(d) Subpoena Duces Tecum. Service of a subpoena duces tecum is completed by showing the original and delivering a copy to the person having possession or control of the documentary evidence. Service is invalid if the declaration in support is not served on the person at the same time as the subpoena duces tecum.

NOTE: Authority cited: Sections 5076.2 and 5076.3, Penal Code. Reference: Section 1328, Penal Code; and In re Carroll(1979) 80 Cal. App. 3d 22.

#### HISTORY:

1. Amendment of section and Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

#### **2679. Witness Obligation to Comply.**

(a) General. A person is obliged to attend a parole revocation or parole rescission hearing as a witness pursuant to a subpoena or a subpoena duces tecum at any place within the county of the person's residence and at any place outside the county of residence which is less than 50 miles from the person's residence. Witnesses shall be paid fees and mileage at the rate provided in Government Code Section 68093.

(b) Custodian of Records.

(1) General. The custodian of records may, upon receiving a subpoena duces tecum, mail a true, legible, and durable copy of all the records described in the subpoena duces tecum. The records shall be accompanied by the affidavit of the custodian.

(2) Affidavit of Custodian. The affidavit shall state that the affiant is the custodian of the records and is authorized to certify the records; that the copy is a true copy of the records described in the subpoena duces tecum; and that the records were prepared in the ordinary course of business.

If the custodian has none or only part of the records described in the subpoena duces tecum, the custodian shall mail the affidavit and the available records.

(3) Attendance Required. The custodian of records shall attend the hearing and produce original records only when the subpoena duces tecum contains a clause to that effect.

(c) Failure to Comply. If a witness fails to comply with a subpoena or a subpoena duces tecum, the board may petition the Superior Court in the county in which the hearing is pending for an order compelling compliance.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Carroll, 80 Cal.App. 3d 22 (1978).

#### **2680. Quashing.**

(a) General. The board, upon request timely and reasonably made, may quash a subpoena or subpoena duces tecum entirely, modify it, or direct compliance with it upon terms or conditions. The request to quash shall be made to the subpoena coordinator at board headquarters and shall include specific reasons for the request.

(b) Criteria. The board shall consider the objections to a subpoena or a subpoena duces tecum in light of all available information. The guiding principles shall be to protect witnesses from unreasonable and oppressive demands and to ensure their safety.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Carroll, 80 Cal.App. 3d 22 (1978).

#### **2681. Decision.**

The board has final responsibility for deciding whether to issue a subpoena or a subpoena duces tecum and whether to grant or deny a request to quash a subpoena or a subpoena duces tecum. The board may delegate these decisions to department staff.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Carroll, 80 Cal.App. 3d 22 (1978).

#### **2682. Appeals.**

There shall be no appeal of the denial of a request for a subpoena or a subpoena duces tecum or a denial or granting of a request to quash a subpoena or a subpoena duces tecum until after the parole revocation or parole rescission hearing.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: In re Carroll, 80 Cal.App. 3d 22 (1978). Attorney Determinations

## Article 6. Attorney Determinations

#### **2690. General.**

Assistance of counsel during revocation and rescission proceedings shall be approved if a timely request is made by the prisoner or parolee and the need for counsel is established under sections 2692-2694. If counsel is approved, counsel shall be appointed for indigent prisoners and parolees.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3060, Penal Code.

#### HISTORY:

1. Renumbering of article 5 (sections 2690-2701) to article 6 filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).



2. Editorial correction of printing error restoring missing article 6 heading (Register 91, No. 29).
3. Editorial correction of article 6 heading (Register 95, No. 14).

#### **2691. Request for an Attorney.**

A prisoner or parolee desiring the assistance of counsel in revocation or rescission proceedings must make a request for the assistance of an attorney within four days of receiving the "Notice of Right to Hearing."

A prisoner or parolee who initially waives counsel but then requests counsel shall be given an attorney determination. A prisoner or parolee who withdraws a request for counsel may not later request counsel.

#### **2692. Basic Test.**

The guiding principle in deciding whether the assistance of counsel is needed is fundamental fairness. This decision can only be made on a case by case basis, and cannot be stated in any flat policy or rule.

If in any case the prisoner or parolee needs assistance of counsel in order to be treated in a fundamentally fair manner in view of the charges brought and the individual's ability to respond to the charges, counsel should be granted, regardless of the presumption of need discussed in Section 2693.

#### **2693. Presumption of Need.**

(a) **Presumption.** A prisoner or parolee is presumably entitled to assistance of counsel if there is a colorable claim that the individual did not commit the violation (see subsection (b)), or if there are substantial mitigating circumstances (see subsection (c)). In either event, and particularly in close cases, the strength of the colorable claim or the mitigating circumstances must be weighed against the prisoner's or parolee's ability to speak for himself (see Section 2694).

(b) **Colorable Claim.** A prisoner or parolee who has a colorable claim that he is not guilty of the charges is presumably entitled to the assistance of counsel. "Colorable" is defined as seemingly valid or genuine; having an appearance of truth, right or justice; plausible. The claim should have an appearance of truth; it need not be probably true, but merely plausible.

Ordinarily, a mere denial of the charges without further information is insufficient to raise a colorable claim.

There can be no colorable claim of innocence if the prisoner or parolee has been convicted of the charge in court, or has been found guilty of the charge in probation revocation or disciplinary proceedings.

The strength of the colorable claim must be weighed against the prisoner's or parolee's ability to speak for himself. If he has a colorable claim of denial, he is presumably entitled to assistance of counsel unless he is particularly capable of speaking for himself.

(c) **Mitigating Circumstances.** If there are substantial reasons which justify or mitigate the violation and make revocation or rescission inappropriate and the reasons are complex or otherwise difficult to develop or present, the presumption is also raised.

(1) **Substantial Reasons.** Claims in justification or mitigation must not only be colorable, but also substantial. A substantial reason refers to one neither imaginary nor illusive but rather solid, of real worth, real.

(2) **Makes Revocation or Rescission Inappropriate.** The reasons put forward must not only be colorable and substantial but must be such that they make revocation or rescission inappropriate. A reason justifying or mitigating an alleged violation will only affect the decision on the need for counsel if proof of its existence will affect the decision whether or not to revoke or rescind.

(3) **Complex or Otherwise Difficult to Develop or Present.** The reasons offered in justification or mitigation must be examined to determine their complexity. If these reasons are not complex or

otherwise difficult to develop or present, they do not support a presumption that counsel is needed.

There may be situations where circumstances aggravate the character of the violation. Disproving such aggravating circumstances must be considered a process of justification or mitigation. If such aggravating circumstances are complex or otherwise difficult for the prisoner or parolee to meet, it should be presumed that counsel is needed.

(4) **Rescission and Revocation.** Mitigating circumstances may be presented at the revocation or rescission hearing only.

#### **2694. Ability to Speak for Self.**

In every case, the prisoner's or parolee's ability to speak for himself must be considered. A colorable claim of innocence or a claim of mitigating circumstances must be weighed against the ability to speak for oneself. Even where there is no colorable claim or substantial mitigating circumstances, a prisoner or parolee may be so incapable of speaking for himself that counsel ought to be granted.

The ability to speak must be evaluated in terms of the charges being alleged. Physical and mental disabilities, age, education, experience, and like factors may show need where ordinarily counsel is not required or may eliminate the need where ordinarily counsel should be provided.

#### **2695. Preliminary and Final Hearings.**

Separate attorney determinations should be made for prerevocation and prerescission hearings and for revocation and rescission hearings. If an attorney is granted at the prerevocation or prerescission hearing, an attorney shall be allowed at the revocation or rescission hearing unless the prisoner or parolee is convicted of the charge before the final hearing.

#### **2696. Information Considered.**

The interviewer shall consider all relevant information including: the reasons for the request; the report supporting the charges; and the cumulative case summary.

If the prisoner or parolee refuses to give reasons for the request, it should be explained that any information provided will not be given to the hearing panel and that the interviewer will not sit on the hearing panel. If the prisoner or parolee persists in his refusal, the determination shall be made on the basis of the information available.

If it is clear from a review of the documents that the prisoner or parolee is entitled to counsel, a personal interview need not be conducted.

#### **2697. Decision.**

The board has final responsibility for deciding whether the prisoner or parolee is to have the assistance of counsel. The board may delegate the initial decision to department staff.

#### **2698. Indigent Prisoner or Parolee.**

A written declaration of the prisoner's or parolee's inability to pay for any attorney shall be considered if a request for an attorney is granted. A prisoner or parolee shall be deemed indigent if he is financially unable to obtain assistance of counsel.

A prisoner or parolee is presumed able to afford an attorney if the prisoner or parolee has one thousand five hundred dollars (\$1,500.00) or more in cash, institutional trust account, savings account, checking account or any combination of cash and accounts. A prisoner or parolee with one thousand five hundred dollars (\$1,500.00) must show that he or she has been unable to obtain an attorney before an attorney will be appointed at state expense.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Gagnon v. Scarpelli, 411 U.S. 778 (1973).



## HISTORY:

1. Amendment filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).

**2699. Attorney Selection.**

If request for attorney assistance is approved and indigency demonstrated, counsel shall be provided the prisoner or parolee at state expense. The central office hearing coordinator shall make arrangements for providing the attorney.

**2700. Hearing Panel Designation.**

No person who participated in making an attorney determination or reviewing an appeal of a denial of a request for an attorney should be assigned to the hearing panel in that case.

**2701. Appeals.**

## HISTORY:

1. Repealer filed 4-15-2004 as an emergency; operative 5-1-2004 (Register 2004, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-30-2004 or emergency language will be repealed by operation of law on the following day.
2. Repealer filed 8-30-2004 as an emergency; operative 8-30-2004 (Register 2004, No. 36). A Certificate of Compliance must be transmitted to OAL by 12-28-2004 or emergency language will be repealed by operation of law on the following day.
3. Repealer filed 12-27-2004 as an emergency; operative 12-27-2004 (Register 2004, No. 53). A Certificate of Compliance must be transmitted to OAL by 4-26-2005 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 12-27-2004 order transmitted to OAL 4-26-2005 and filed 6-8-2005 (Register 2005, No. 23).

**Article 7. Warrants of Arrest****2710. General.**

The board may issue warrants ordering a parolee placed or retained in custody as provided in this article.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3060, Penal Code.

## HISTORY:

1. Renumbering of Article 6 (Sections 2710-2714) to Article 7 filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).

**2711. Warrants Based on Board Action.**

(a) Parole Suspended. When the Regional Administrator or the Interstate Unit submits a parole violation report charging that a parolee has absconded or otherwise violated the conditions of parole the board at the central office calendar may decide to order parole suspended. If parole is suspended, the board shall issue a warrant. The warrant shall be signed by a commissioner of the board.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3060, 5075 and 5076.1, Penal Code.

## HISTORY:

1. Amendment filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).
2. Repealer of subsection (b) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
3. Amendment filed 1-20-88; operative 2-19-88 (Register 88, No. 5).

**2712. Warrants Based on Individual Member Action.**

(a) General. A member may order a parolee placed or retained in custody when the member has good cause to believe the parolee has absconded or otherwise violated the conditions of parole. This warrant may be issued without any prior board action suspending or revoking parole.

(b) Procedure. The member may issue the warrant and notify appropriate law enforcement agencies of the issuance. Immediately after issuing the warrant the member shall forward the warrant, the reasons or basis for its issuance and a list of law enforcement agencies notified, if any, to the executive officer.

(c) Central Office Procedure. Upon receipt of the warrant the executive officer shall immediately notify the P&CSD of the warrant and the reasons for the issuance. P&CSD shall investigate the basis for the warrant and submit a parole violation report to the board at the central office calendar. The board at the central office calendar may determine to suspend parole and continue the warrant or may determine not to suspend parole. If parole is not suspended the board at the central office calendar shall notify the executive officer who shall recall the warrant as provided in section 2713.

**2713. Recall of Warrant.**

(a) General. Board warrants remain in full force and effect until the executive officer recalls the warrant by removing it from the active warrant file and notifying appropriate law enforcement agencies that the warrant has been recalled.

(b) Arrest of Parolee. The executive officer shall recall warrants upon notification from the regional administrator that a parolee subject to a warrant has been taken into custody by the department.

(c) Discharge of Absconder. The regional administrator shall notify the board at the central office calendar of the case of any absconder who has been at large for five years and who has met the minimum term considering time in prison, on parole, and at large. The board at the central office calendar may determine to discharge the absconder. If the board at the central office calendar discharges the absconder it shall recall the warrant.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3060, Penal Code.

## HISTORY:

1. Amendment of subsection (c) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

**2714. State and National Warrant Systems.**

(a) California System. All warrants issued pursuant to §§ 2711 and 2712 for parolees whose whereabouts are unknown shall be entered in the California warrant system (Wanted Persons System).

(b) National Warrant System.

(1) Criteria for Entering Warrant in National System. Warrants issued pursuant to §§ 2711 and 2712 for parolees whose whereabouts are unknown shall be reviewed by the board at the central office calendar to determine if the warrant should be entered in the national warrant system (National Crime Information Center - "NCIC"). The factors to consider in determining whether to enter the warrant in NCIC include whether the parolee:

(A) Has a history of prior felony convictions for crimes of violence or for offenses involving weapons, great bodily injury, or sexual assaults;

(B) Is wanted by other state agencies;

(C) Was on parole from a term imposed for a violent crime or for multiple offenses;

(D) May remain on parole at least three months considering the amount of time his parole period can be extended;



(E) Was suspected of having committed other offenses at the time he absconded;

(F) Has family, employment, or residential ties with California;

(G) Is likely to have absconded to another state;

(H) Might be accepted for supervision in another state.

The board shall consider any other relevant information, including the expense of returning a parolee to California.

Whenever the board enters a warrant into the NCIC, the board's suspension order shall indicate the specific reasons the warrant has been entered in that system and include an action to return the parolee to California for revocation proceedings.

(2) Execution of Warrant. When the warrant is executed, the parolee shall be returned to California for revocation proceedings (see Chapter 6, Article 7) unless there are specific circumstances and substantial reasons that indicate a return would not be in the interests of justice.

(3) Purging Warrants. If the warrant has not been executed five years after entering it in the NCIC, the board shall review the case. If no other jurisdictions have issued warrants since the board issued its warrant, the board shall remove the warrant from the NCIC, unless reasons are stated for retaining the warrant.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3060, Penal Code.

#### HISTORY:

1. New section filed 6-11-79; effective thirtieth day thereafter (Register 79, No. 24).
2. Amendment filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).

## Article 8. Multijurisdiction Regulations

### 2730. Application of Article.

The revocation procedures set forth in Articles 1-5 of this chapter apply to any parolee on parole from a California commitment who is located in California. Except as provided in this article, the revocation procedures set forth in Articles 1-5 in this chapter apply to any parolee on parole from a California commitment who is being supervised in another state or who absconds to another state.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3057, 3059, 3060, 3064, Penal Code.

#### HISTORY:

1. Repealer of Article 7 (Sections 2730-2756) and new Article 7 (Sections 2730-2733) filed 8-17-78; effective thirtieth day thereafter. Filed in the week of Register 78, No. 33, this amendment is printed in Register 78, No. 41 for technical reasons (Register 78, No. 41). For prior history, see Register 77, No. 44.
2. Renumbering of Article 7 (Sections 2730-2733) to Article 8 filed 10-25-79; effective thirtieth day thereafter (Register 79, No. 43).

### 2731. Absconders from California.

(a) Reporting. P&CSD shall report to the local board at the central office calendar any parolee who absconds. A parolee absconds when the parolee leaves California without permission, does not return to California after leaving with permission or has not been available for contact for thirty days. An absconder report shall be submitted whenever P&CSD is aware that a parolee has absconded although the parolee may be in the custody of another jurisdiction and the parolee's location known at the time the report is submitted. The report shall indicate the date the parolee absconded or the date P&CSD determined the parolee absconded.

(b) Board Action. When an absconder report is submitted, the board at the central office calendar shall review the report and suspend parole. The date of suspension shall be the date the parolee left California, the date the parolee should have returned to California if out of state with permission, or the date P&CSD determined he absconded. The parole period stops running the date of suspension. The suspend action authorizes the board to issue a warrant for the parolee's arrest if the parolee's whereabouts are unknown or to place a California detainer if he is in the custody of another jurisdiction.

(c) Absconder Located.

(1) Reporting. P&CSD shall report to the board at the central office calendar when an absconder is located. If the absconder is located in California the report shall indicate the date the parolee was located or arrested, whichever is earlier, and the parole period will recommence on that date. If the absconder is located in another jurisdiction, the parole period will recommence as provided in subsection (c)(2).

(2) Board Action.

(A) Located in California. If the absconder is located in California the provisions of Articles 1-5 shall apply to the revocation procedures. The board shall reinstate parole effective the date the parolee is arrested or located, whichever is earlier. If the board orders parole revoked, the parolee shall receive credit on the revocation period for any time in custody after the date the parolee is arrested or located, whichever is earlier. If the parolee is arrested under an alias, the reinstatement and credit for time in custody shall commence on the date of arrest even if the department is unaware of the arrest because of the parolee's use of an alias.

(B) Located Outside California.

1. General. If the absconder is located in another jurisdiction the board at the central office calendar shall determine whether the parolee should be discharged, referred for supervision in the other jurisdiction or scheduled for revocation proceedings as provided in this subsection. The department report may contain any of these as recommendations.

2. Discharge. After reviewing the case the board may decide to waive the remaining period of parole. This shall be accomplished by reinstating the parolee on parole the date of the board action and waiving the remaining period of parole.

3. Out of State Referral. In determining whether the absconder shall be referred for supervision in the other jurisdiction, the board shall consider the following information: the parolee's employment history and stability; the parolee's residential pattern; the parolee's family and community relationships; the parolee's record of absconding from parole.

If the parolee is referred for supervision in the other jurisdiction the parolee shall be reinstated and the parole period shall recommence on the date the board orders the parolee referred.

4. Revocation Proceedings Scheduled.

a. No Criminal Prosecution. If the parolee is not undergoing criminal prosecution in the other state the board shall order the parolee returned to California for revocation proceedings. The parolee shall be reinstated on parole effective the date the parolee waived extradition or the date the court ordered the parolee extradited if he contested extradition. The parole period commences on the effective date of reinstatement.

The parolee shall have a revocation hearing upon his return to California as provided in Article 3 of this Chapter. If the board orders parole revoked the parolee shall receive credit on the revocation period for any time in custody after the effective date of reinstatement.

b. Criminal Prosecution. If the parolee is undergoing criminal prosecution in the other state and waives extradition, department staff shall notify him that he may unconditionally waive the revocation hearing (section 2651). If the parolee waives the hearing the board action shall include a reinstate action to reinstate



the parole period effective the date of the in absentia hearing. If the board orders parole revoked the parolee shall receive credit on the revocation period for any time in custody after the effective date of reinstatement.

If the parolee does not waive extradition or does not waive the revocation hearing he shall have a revocation hearing upon return to California as provided in Article 3 of this Chapter. The board shall reinstate parole effective on the later of: the date the other jurisdiction notifies P&CSD that the parolee can be returned to California because the criminal prosecution has terminated; or the date the parolee waives extradition. The parole period commences on the effective date of reinstatement. If the board orders parole revoked the parolee shall receive credit on the revocation period for any time in custody after the effective date of reinstatement.

When the prosecution terminates, the board shall review the decision to revoke or to schedule for revocation in light of the disposition at the criminal proceedings. The board may reaffirm its earlier action, discharge the parolee, or modify the revocation period, if any.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3057, 3059, 3060, and 3064, Penal Code.

#### HISTORY:

1. Amendment of subsection (c)(2)(B) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. Amendment of subsections (c)(2)(A) and (c)(2)(B)4 filed 5-28-81; effective thirtieth day thereafter (Register 81, No. 22).

#### **2732. Multijurisdiction Parolees Who Abscond.**

(a) Reporting. When the interstate unit receives information that a multijurisdiction parolee has absconded, a report shall be submitted to the board at the central office calendar. A multijurisdiction parolee absconds when he leaves the supervising state without permission, he does not return to the supervising state after leaving with permission, or he is unavailable for contact in the supervising state for more than 30 days.

An absconder report shall be submitted whenever it is clear that the parolee absconded although he is in custody or his location is known at the time the report is submitted. The report shall indicate the date the parolee absconded or the date the Interstate Unit determined he absconded.

(b) Board Action. When an absconder report is submitted, the board at the central office calendar shall review the report and suspend parole. The date of suspension shall be the date the parolee left the supervising state, the date the parolee should have returned to the supervising state if he was granted a temporary leave or the date the interstate unit determined he absconded. The parole period stops running on the date of the suspension. The suspend action authorizes the board to issue a warrant for the parolee's arrest if the parolee is in the custody of another jurisdiction.

(c) Absconder Located.

(1) Reporting. The interstate unit shall report to the board at the central office calendar when a multijurisdiction absconder is located.

(2) Board Action. If the parolee is located in the supervising state the board shall reinstate parole effective the date he was located. The parole period shall commence on the effective date of reinstatement. The board shall also determine whether to order revocation proceedings or continue the parolee on parole. If the board orders revocation proceedings the procedures in section 2733 shall apply.

If the parolee is located in California, the board shall reinstate parole on the date of his arrest or location in California, whichever is earlier. All the procedures of Article 1-5 shall apply to revocation procedures in this case.

If the parolee is located in a state other than California or the supervising state the procedures of Section 2731(c)(2) shall apply.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3057, 3059, 3060, 3064, Penal Code.

#### **2733. Multijurisdiction Parolees: Revocation.**

(a) General. The board may revoke the California parole of any cooperative or concurrent parolee. The six-month or one year maximum confinement pursuant to revocation shall be computed from the date the other jurisdiction places a parole hold for California.

(b) Reporting Parole Violations. The interstate unit shall report to the board at the central office calendar any parolee who is reasonably believed to have engaged in any of the conduct listed in Section 2616 or who falls into the criteria of Section 2601. The provisions of Sections 2617-2620 apply to the submission of reports for multijurisdiction parolees.

(c) Board Action.

(1) Issue Warrant. The board shall review the information to determine if a warrant should be issued to place or retain the parolee in custody. In making the warrant decision the board shall consider the factors listed in Sections 2601 and 2602.

(2) Revocation Proceedings. The board shall review the information to determine whether the parolee should be scheduled for revocation proceedings or continued on parole.

If the parolee is scheduled for revocation proceedings the provisions of Section 2641 apply. If the parolee does not waive the revocation hearing or requests a hearing after a conditional waiver, the interstate unit will arrange for officials of the receiving state to conduct a revocation hearing. The receiving state's recommendations as to good cause shall be referred to the board. The receiving state may make any recommendation listed in Section 2645. The board shall review the other state's recommendation and make the decision concerning good cause.

If the decision is to return the parolee to custody, the parolee shall be returned to California as soon as possible if he is not undergoing criminal prosecution in the receiving state. If he is undergoing criminal prosecution, the parolee shall be retained in custody under a parole hold in the other state. When the criminal prosecution terminates, the board shall review the case to determine whether the parolee should be returned to California to complete any time remaining on the revocation time, the revocation order should be modified to the amount of time already serve, or the parolee should be discharged. In no event will the California hold be retained for longer than six months or one year from the date the hold was placed.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 3057, 3059, 3060 and 3064, Penal Code.

#### HISTORY:

1. Amendment of subsection (a) filed 1-25-79; effective thirtieth day thereafter (Register 79, No. 4).
2. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).

### Article 9. Parole Revocation Extension Procedures

#### **2740. Parole Revocation Maximum Term.**

Confinement pursuant to a revocation of parole, in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in Section 2742.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.



**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).

**2741. Release to Parole.**

Following a return to custody term of confinement pursuant to a parole revocation or a parole revocation extension, and without a new commitment to prison, a parolee shall be released to parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Penal Code Section 3000 which was unexpired at the time of each revocation.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.

**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).

**2742. Parole Violation Extension Procedures.**

(a) General. Notwithstanding the provisions of Section 2740, the board may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation.

(b) Reportable In-Custody Misconduct. Upon discovery of a parolee's misconduct, the institution or county jail/holding facility staff will determine whether or not the conduct is reportable to the Board of Prison Terms as conduct for which revocation custody time may be extended under Penal Code Section 3057(c).

(c) Reporting. CDC/county jail staff shall present the parolee's misconduct to the Board of Prison Terms. Reports of misconduct shall be forwarded whether or not the underlying conduct has been adjudicated by CDC.

Institutional staff shall prepare and present their cases to any available deputy commissioner or commissioner for screening and disposition of the case at the institution where the parole violator is housed.

County jail cases will be forwarded to the regional headquarters, P&CSD, where they will be presented to a deputy commissioner or commissioner for screening and disposition.

(d) Extension Pending Hearing. In any misconduct case in which the parolee is within 45 days of his/her re-release date, and where there is no deputy commissioner or commissioner personally available, staff shall report the misconduct by telecopier to the board central office calendar for immediate action requesting that the parolee's re-release date be extended for a period not to exceed 30 days for misconduct punishable as a serious disciplinary offense or for a period not to exceed 45 days for misconduct punishable as a misdemeanor or felony. The signature of one commissioner or deputy commissioner shall be required to order the extension pending revocation extension proceedings.

(e) Urgent Extension Pending Hearing. In those instances wherein the act of misconduct takes place immediately prior to release or during such time as the Board of Prison Terms is closed (holidays, weekends, evenings, etc.), and the release of the parolee/inmate would otherwise take place without an action by

the board, staff may contact authorized BPT employees by phone and these persons may order that the parolee's release be extended without written order. Any telephonic extension so ordered shall be confirmed by the person ordering it in writing on the next working day.

(f) Screening. Screening (offering and accepting stipulated dispositions) shall be conducted by one deputy commissioner or commissioner and an extension period offered commensurate with the degree of seriousness of the misconduct. If the parolee accepts the revocation extension offer, he/she shall sign an unconditional waiver, under the provisions of section 2641(a). In cases where there is insufficient information to support a good cause finding but the reviewer believes that upon presentation of additional evidence a good cause finding could be made, the matter will be scheduled for a revocation extension hearing and the commissioner or deputy commissioner shall notify P&CSD that additional evidence must be obtained and provided for the revocation extension hearing.

(g) Optional Waivers. A parolee may sign an optional waiver under section 2641(b) in cases where criminal charges are pending relating to the same conduct. Upon disposition of the criminal charges, the parolee may request a hearing or sign an unconditional waiver.

(h) Scheduling. All cases requiring an extension hearing shall be scheduled promptly in order to maintain the availability of witnesses. When the revocation release date has been extended pending a hearing, the hearing shall be conducted prior to the extended revocation release date or the misconduct charges will be dismissed.

(i) Rights. Parolees pending a revocation extension hearing will be afforded the same rights as parolees pending revocation hearings.

(j) Transfer Pending Hearing. Parolees scheduled for revocation extension hearings shall not be transferred from the institution prior to the hearing.

(k) Disposition.

(1) Multiple Misconduct Charges. Multiple misconduct charges shall be assessed consecutive to each other, and shall not exceed 12 months for all misconduct during one parole revocation period.

(2) Disciplinary Rule Violation Schedule. When a hearing panel makes a good cause finding that a prisoner has committed an act of misconduct which is subject to punishment pursuant to Penal Code Section 3057, the hearing panel may assess additional time to the prisoner's parole revocation period in accordance with the following schedule:

(A) Felonies. Upon a finding of good cause that a prisoner, confined pursuant to a parole revocation, has committed an act of misconduct punishable as a felony, whether or not prosecution is undertaken, the board may assess from 0-180 days of additional revocation time.

Acts of misconduct which are punishable as felonies include the following:

1. Murder, manslaughter or attempted murder.
2. Aggravated assault by prisoner.
3. Possession or manufacture of any firearm, deadly weapon, or explosive device (includes any sharp instrument).
4. Battery on non-prisoner by prisoner.
5. Assault with a deadly weapon or caustic substance.
6. Rape, Sodomy or oral copulation accomplished against victim with force.
7. Arson involving the burning of a structure.
8. Possession of flammable explosive or combustible material with intent to burn any structure or property.
9. Solicitation of murder, assault with a deadly weapon by means of force likely to produce bodily injury, arson, or a forcible sex act.
10. Taking of a hostage.



11. Escape or attempted escape, with force.
12. Escape from any prison, institution, camp or re-entry facility.
13. Escape or attempted escape without force from a prison, institution, camp or re-entry facility.
14. Willful and intentional destruction of public property valued in excess of \$400 in a state prison or county jail.
15. Conspiracy to commit any felony or misdemeanor offense.
16. Assault or battery on a peace officer, not involving the use of a weapon.
17. Furnishing equipment or aiding and abetting an escape or escape attempt.
18. Extortion.
19. Bribery.
20. Solicitation of extortion, bribery or forgery.
21. Arson of land or property of another not involving a structure.
22. Forgery, falsification or alteration of any official record or document prepared or maintained by the department which could affect a term of imprisonment.
23. Possession of any narcotic, drug or controlled substance in a re-entry facility.
24. Manufacture of alcohol.
25. Possession of any alcoholic beverage or intoxicating substance, in any prison, institution or camp including a re-entry facility.
26. Possession of any container, device, contrivance, instrument or paraphernalia intended for unlawfully injecting or consuming narcotics, drugs or alcoholic beverages.
27. Commission of any felony offense not otherwise mentioned in this schedule.

(B) Misdemeanors. Upon a finding of good cause to believe that a prisoner, confined pursuant to a parole revocation, has committed an act of misconduct punishable as a misdemeanor, whether or not prosecution is undertaken, the board may assess from 0-90 days of additional revocation time.

Acts of misconduct which are punishable as misdemeanors include the following:

1. Participating in a riot, rout or unlawful assembly.
2. Inciting a riot.
3. Indecent exposure.
4. Battery on a prisoner in which no serious bodily injury is inflicted and no weapon is used.
5. Theft or embezzlement involving funds or property with a value less than \$400.
6. Intentional destruction of state property valued at less than \$400.
7. Consensual participation in an act of sodomy or oral copulation.
8. Gambling in any prison, institution, camp or re-entry facility.
9. Commission of any misdemeanor offense not otherwise mentioned in this schedule.

(C) Serious Disciplinary Offenses. Upon a finding of good cause to believe that a prisoner, confined pursuant to a parole revocation, has committed an act of misconduct defined as a serious rule violation pursuant to Section 3315, the board may assess from 0-30 days of additional revocation time.

Serious disciplinary offenses include but are not limited to the following:

1. Any act committed by a prisoner is a serious disciplinary offense if the act or action of the prisoner is an act of force or violence against another person, a breach of or presents a threat to institution security, a serious disruption of institution operations, the introduction or use of dangerous contraband or controlled substances or an attempt to commit any such act coupled with a

present ability to carry out the threat or attempt if not prevented from doing so.

2. Any act of misconduct which is reportable to the Board of Prison Terms.

3. Intentional destruction of state property valued at \$50 or more, or intentional damage to state property requiring more than \$50 to repair or replace.

4. Hideout or preparation to escape.

5. Possession of escape paraphernalia.

6. Possession of money in an amount of five dollars or more without proper authorization.

7. Acts of disobedience or disrespect which by reason of intensity or context create a potential for violence or mass disruptive behavior.

8. Willfully inciting or attempting to incite other persons to commit an unlawful act of force or violence.

9. Refusal or failure to perform work or participate in programs as ordered or assigned.

10. Participation in a strike or work stoppage.

11. Mail or visiting violations that create a threat to the safety of any individual or to institutional security, including the introduction of dangerous contraband or a controlled substance, or the obtaining or attempt to obtain a family visit by falsification of information.

12. The throwing of any liquid or solid substance on a nonprisoner.

13. Unauthorized possession of official departmental records or documents which could affect any prisoner's sentence.

14. Refusal to submit to a test for controlled substances.

15. Late return or failure to return from authorized temporary release.

16. A pattern of administrative rule violations indicating significant maladjustment, which violations are of increasing seriousness or are of special significance in light of an existing release date.

17. Involvement in a conspiracy to do any or all of the above.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.

#### HISTORY:

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).

### Article 10. Worktime Credits

#### 2743. Worktime Credits.

(a) Except for those parolees falling within the guidelines of Section 2744, any revocation period imposed pursuant to section 2740 may be reduced in the same manner and to the same extent as the term of imprisonment may be reduced by worktime credits under Penal Code Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Penal Code section 2932.

(b) Worktime credit forfeited shall not be restored.

(c) Detention in a county jail facility or community correctional facility shall result in the application of time credits equal to those provided in Penal Code section 2931.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Sections 2931, 2932, 2933 and 3057, Penal Code.



**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).
4. Editorial correction adding HISTORY Nos. 2 and 3 (Register 89, No. 30).

**2744. Non-Eligibility for Worktime Credits.**

The following parolees are not eligible for credits:

(a) parolees who are sentenced under Penal Code section 1168 with a maximum term of life imprisonment.

(b) parolees who violate a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole out-patient clinic, or psychiatric attention.

(c) parolees who were revoked for conduct described in, or that could be prosecuted under, any of the following sections whether or not prosecution is undertaken: section 189, section 191.5, subdivision (a) or paragraph (3) of subdivision (c) of section 192, sections 203, 207, 211, 217.1 or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of section 245, subdivision (2) of section 261, section 264.1, subdivision (c) or (d) of section 286, Section 288, subdivision (c) or (d) of section 288a, sections 289, 347, or 404, subdivision (a) of section 451, sections 12020, 12021, 12022, 12022.5, 12022.7, 12022.8, 12025, or 12560, or section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(d) parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in section 2744(c).

(e) parolees who the Board of Prison Terms finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

NOTE: Authority cited: Section 5076.2, Penal Code. Reference: Section 3057, Penal Code.

**HISTORY:**

1. New section filed 12-7-87 as an emergency; operative 12-7-87 (Register 87, No. 50). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-6-88.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 89, No. 8).
3. New section filed 2-1-89; operative 2-1-89 (Register 89, No. 8).

**CHAPTER 7. EXECUTIVE CLEMENCY****Article 1. Certificate of Rehabilitation****HISTORY:**

1. Repealer of Article 1 (Sections 2800-2807) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).

**Article 2. Traditional Pardon Procedures****2815. General.**

The procedures in this article apply to persons sentenced to life imprisonment without possibility of parole, to persons residing outside of California, and to persons discharged or released on parole before May 13, 1943.

**2816. Application Direct to Governor.**

(a) Persons Eligible. The following persons shall apply directly to the Governor: persons residing outside California, persons discharged or released on parole prior to May 13, 1943, and persons serving sentences of life imprisonment without possibility of parole who have suffered more than one felony conviction.

(b) Board Investigation. Upon request of the Governor the board shall investigate and report on any application for reprieves, pardons and commutations of sentence. The board shall consider the application, the transcripts of judicial proceedings and all documents submitted with the application. Investigators for the board may take testimony, examine witnesses under oath and take all action necessary to conduct a full and complete investigation of the application. The board may require the court in which the conviction was had or the district attorney who prosecuted the action, to furnish it immediately with a summary of the facts proved at trial, any other facts relevant to issuing or denying the pardon, and any recommendations, including the reasons, concerning granting or denying the pardon.

**2817. Board Referral to Governor.**

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

**HISTORY:**

1. Amendment of subsections (e) and (f) and new subsection (g) filed 4-4-78; effective thirtieth day thereafter (Register 78, No. 14).
2. Amendment of subsection (b) filed 8-12-82; effective thirtieth day thereafter (Register 82, No. 33).
3. Repealer of subsection (c) and relettering of subsections (d)-(g) to subsections (c)-(f) filed 12-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 52).
4. Repealer of subsection (f) filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).
5. Amendment filed 11-13-85; effective thirtieth day thereafter (Register 85, No. 46).
6. Amendment of subsections (a) and (b) and Authority Note, repeal and new subsections (c)-(e), and new subsections (f)-(h) filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
7. Repealer filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

**2817.1. Board Hearing, Clemency.**

NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code. Reference: Sections 4801 and 5076.1, Penal Code.

**HISTORY:**

1. New section filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
2. Repealer filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

**2818. Board Recommendation.**

Prior to en banc consideration the executive officer shall assign a deputy commissioner or the chief investigator or his or her designee to complete a background investigation and submit a written report.

In all cases referred to the board for investigation by the Governor, the full board shall consider the recommendation to be made to the Governor regarding pardon and/or commutation. The recommendation of a majority of the full board shall be the board's recommendation to the Governor. If the case was referred by a hearing panel and the board does not recommend pardon, the board shall not refer the case to the Governor but shall provide the prisoner with its reasons for not recommending pardon.



NOTE: Authority cited: Sections 3052 and 5076.2, Penal Code.  
Reference: Sections 4801 and 5076.1, Penal Code.

**HISTORY:**

1. New undesignated first sentence and NOTE filed 11-26-90; operative 12-26-90 (Register 91, No. 2).
2. Amendment filed 12-20-93; operative 1-19-94 (Register 93, No. 52).

**2819. Governor's Action.**

**HISTORY:**

1. Repealer filed 3-7-84; effective thirtieth day thereafter (Register 84, No. 10).

### Article 3. Battered Woman Syndrome; Commutation or Court Referral

**2830. Recommendation to Governor or Other Action.**

Upon referral from the executive officer, a commissioner, or a deputy commissioner, the board shall investigate cases with information or evidence that the prisoner suffered Battered Woman Syndrome (BWS), as defined in section 2000(b), to determine whether the criminal behavior was the result of that victimization. If the investigation substantiates that the criminal behavior was the result of that victimization, the board shall then decide whether further action, which may include a recommendation to the Governor that the prisoner's sentence be commuted pursuant to Penal Code section 4801, or a referral of the case back to the court pursuant to Penal Code section 1170(d), is appropriate. Board staff shall document the results of investigations from all referrals.

NOTE: Authority cited: Sections 3052 and 5076.2(a), Penal Code.  
Reference: Sections 1170(d), 4801, 5075.5 and 5076.1, Penal Code.

**HISTORY:**

1. New article 3 (section 2830) and section filed 3-16-2001 as an emergency; operative 3-16-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-16-2001 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 3-16-2001 order transmitted to OAL 7-16-2001 and filed 8-20-2001 (Register 2001, No. 34).

## CHAPTER 10. FOREIGN PRISONER TRANSFER

**2870. Foreign Prisoner Transfer.**

The Chairman of the Board of Prison Terms, as the Governor's designee, has been given the authority to approve or disapprove foreign prisoner transfers under the Convention on the Transfer of Sentenced Persons pursuant to Government Code section 12012.1. Any prisoner wishing to transfer to his/her country of citizenship must submit a written request to the Chairman.

(a) Requests. As a part of the request for transfer, the prisoner must request that the receiving nation submit a letter directly to the Chairman stating an intention to accept the transferred prisoner and indicating the receiving nation's intentions regarding the incarceration of the prisoner. These indications should include such information as the intended duration of the prisoner's sentence in that country and the parole programs available for the prisoner upon his release. Once the Chairman has received the prisoner's written request and the receiving nation's letter of intent, the following factors will be considered and a decision rendered.

(b) Factors Considered. In making a decision on the transfer of a sentenced person, factors to be considered include, but are not limited to, the following:

- (1) The possibility of the transfer contributing to the prisoner's social rehabilitation;
- (2) The gravity of the commitment offense;
- (3) The prior criminal history of the prisoner;
- (4) The health of the prisoner;
- (5) The family, social, or other ties of the prisoner to the sentencing state and the receiving nation; and
- (6) The relevant law within the receiving nation for the criminal offense committed by the prisoner, including sentencing guidelines.

NOTE: Authority cited: June 9, 1999 Delegation of Authority from Governor Davis to Chairman James Nielsen and the Board of Prison Terms. Section 12012.1, Government Code. Reference: Section 12012.1, Government Code. The Convention on the Transfer of Sentenced Persons, 22 I.L.M. 530 (1983).

**HISTORY:**

1. New chapter 10 (section 2870) and section filed 6-18-99 as an emergency; operative 6-18-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-18-99 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 6-18-99 order transmitted to OAL 8-24-99 and filed 10-5-99 (Register 99, No. 41).